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भारत का राजपत्र
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कोयला मंत्रालय

नई दिल्ली, 1 अक्तूबर, 2021

का.आ. 668.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी, जो भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 26 सितम्बर, 2020 में प्रकाशित, भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 846, तारीख 24 सितम्बर, 2020 को जारी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) और भूमि में या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे ;

और, केन्द्रीय सरकार का यह समाधान हो गया है कि सेंट्रल कोलफील्ड्स लिमिटेड, रांची, झारखंड (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि की माप 93.98 एकड़ (लगभग) या 38.04 हेक्टेयर (लगभग) में या उस पर के सभी अधिकार तारीख 26 सितम्बर, 2020 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :-

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन और अन्य सुसंगत विधियों के अधीन यथा अवधारित सभी प्रतिकर, ब्याज, नुकसानियों, इत्यादि और वैसी ही मदों की बाबत् सभी संदाय करेगी;

(2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपील, आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी सरकारी कंपनी द्वारा वहन किए जाएंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार और उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी के पास उक्त भूमि और उक्त भूमि में इस प्रकार निहित अधिकारों को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिये जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/06/2018-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 1st October, 2021

S.O. 668.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 846, dated the 24th September, 2020, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 26th September, 2020, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the lands described in the Schedule appended to the said notification (hereinafter referred to as the said lands) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Central Coalfields Limited, Ranchi, Jharkhand (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the said land measuring 93.98 acres or (approximately) or 38.04 hectares (approximately) and all rights in or over the said lands so vested, shall with effect from the 26th September, 2020, instead of continuing to so vest in the Central Government, shall vest in the Government company, subject to the following terms and conditions, namely:-

(1) The Government company shall make all payments in respect of compensation, interest, damages etc. and the like, as determined under the provisions of the said Act and other relevant law;

(2) A Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable by the Government company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the said Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said lands, so vested, shall also be borne by the Government company;

(3) The Government company shall indemnify the Central Government and its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) The Government company shall have no power to transfer the aforesaid rights in the said lands, so vested, to any other person without the prior approval of the Central Government; and

(5) The Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said lands as and when necessary.

[F. No. 43015/06/2018-LA& IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 सितम्बर, 2021

का.आ. 669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पश्चिम रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 57/2006) को प्रकाशित करती है।

[सं. एल-41012/25/2006-आईआर (बी-1)]

डी. गुहा, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th September, 2021

S.O. 669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -Jaipur as shown in the Annexure, in the industrial dispute between the management of North West Railway and their workmen.

[No. L-41012/25/2006-IR(B-1)]

D. GUHA, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

सी.जी.आई.टी. प्रकरण सं. 57 / 2006

Reference No.L-41012/25/2006-I(B-I)

Dated:06.09.2006

श्री रूपाराम पुत्र श्री मेघराज निवासी– खतूरिया कॉलोनी,

हरिजन बस्ती, हनुमान जी के मन्दिर के पास, शिवबाडी, बीकानेर (राज.)। ...प्रार्थी

बनाम

1. मण्डल रेलवे प्रबंधक, उत्तर पश्चिमी रेलवे, बीकानेर (राज.)।

2. मंडल कार्मिक अधिकारी, उत्तर पश्चिमी रेलवे, बीकानेर (राज.)। ...अप्रार्थी / विपक्षी

उपस्थितः–

प्रार्थी की तरफ से : कोई उपस्थित नहीं।

अप्रार्थीगण की तरफ से : कोई उपस्थित नहीं।

: <u>अधिनिर्णय</u> :

दिनांक : 16.03..2021

1. श्रम एवं नियोजन मंत्रालय भारत सरकार नई दिल्ली द्वारा दिनांक 06.09.2006 को निम्नाकित विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 10 (1) (डी) एवं 2। के अन्तर्गत प्रदत्त शक्तियो के अनुसरण में न्यायनिर्णयन हेतु इस अधिकरण को संदर्भित किया गया :–

> "Whether the action of the Management of North West Railway, Bikaner through Divisional Railway Manager, Bikaner in removal from service of Shri Ruparam, Box Boy w.e.f. 22.05.2003 is legal and justified? If not, what relief the workmen is entitled to and from which date? ''

2. उपर्युक्त विवाद इस अधिकरण को प्राप्त होने पर उभयपक्ष को आहूत किया गया एवं प्रार्थी को उसके दावे का अभिकथन प्रस्तुत करने का निर्देश दिया गया। दिनांक 02.06.2011 को प्रार्थी ने दावे का अभिकथन प्रस्तुत किया। प्रार्थी का यह कथन है कि उसकी प्रथम नियुक्ति उत्तर रेलवे बीकानेर में दिनांक 07.01.1982 को बाक्स वाय के पद पर लोकोलॉबी में की गई थी। प्रार्थी पर यह आरोप लगाया गया कि वर्ष 1999 से जनवरी, 2002 तक वह 305 दिन अनाधिकृत रूप से अनुपस्थित रहा। इस आधार पर आरोप पत्र प्रार्थी को दिया गया। प्रार्थी ने अपना प्रत्युत्तर प्रस्तुत किया– लेकिन विपक्षीगण ने उस पर समुचित विचार नहीं किया। अनुसाशत्मक कार्यवाही प्रारम्भ की गई जिस में प्रार्थी को बचाव का अवसर नहीं दिया– ओर जो दस्तावेज मॉगे वे नहीं दिये गये– इस प्रकार प्राकृतिक न्याय के सिद्वान्तों का हनन किया गया। प्रार्थी की अनुपस्थिति का निर्वेतन–अवकाश स्वीकृत किया जा चुका था– प्रार्थी के विरूद्व एकपक्षीय कार्यवाही कर 22.05.2003 को उसकी सेवा समाप्त कर दी गई। यह आदेश अवेध एवं शून्य है– अतः जॉच की शुद्वता का परीक्षण कर जॉच को अशुद्व घोषित किया जावे– सेवा मुक्ति आदेश 22.05.2003 को निरस्त करते हुए समस्त परिलाभों सहित प्रार्थी को सेवा में बहाल किया जावे।

3. अप्रार्थीगण ने दावे के तथ्यों को अस्वीकार करते हुए यह कहा है कि इस विवाद का क्षेत्राधिकार केन्द्रीय प्रसाशनिक अधिकरण को है। प्रार्थी के विरूद्व नियमानुसार जॉच कार्यवाही कर उसे सेवा से पृथक करते हुये दण्डित किया गया है। प्रार्थी ने उचित अवसर दिये जाने के बाद भी जॉच में सहयोग नहीं किया– प्रार्थी केवल 01.04.2002 को उपस्थित हुआ था अन्य तिथियो को गैर हाजिर रहा। प्रार्थी द्वारा चाहे गये दस्तावेज 30.06.2002 को उपलब्ध करवा दिये गये– व व्यक्तिगत सुनवाई का अवसर भी दिया। प्रार्थी के पास बचाव का कोई आधार नही था– प्राकृतिक न्याय के सिद्वान्तों का पूर्ण अनुपालन किया गया है– अतः दावा निरस्त किया जावे।

4. इस विवाद में विपक्षी द्वारा की गयी घरूलू जॉच की शुद्वता के परीक्षण हेतु प्रकरण नियत किया गया था। दिनांक 12.06.2019 को प्रार्थी के प्रतिनिधी ने अधिकरण को सूचित किया कि प्रार्थी श्री रूपाराम का निधन हो चुका है– तथा उसके विधिक प्रतिनिधियों को अभिलेख पर लेने व सेवा परिलाभों हेतु प्रार्थना पत्र एवं प्रधिकार पत्र प्रस्तुत करने का अवसर दिया जावें। न्यायहित में यह अवसर प्रदान किया गया किन्तु दिनांक 09.10.2019 को पुनः यह अवसर मॉगा गया, जो प्रदान करते हुए 21.11.2019 तिथि नियत की गई। किंतु 21.11.2019, 16.01.2020, 24.08.2020 तथा 02.12.2020 को भी प्रार्थी (मृतक) के विधिक प्रतिनिधियों की ओर से कोई उपस्थित हुआ न ही कोई प्रार्थना पत्र प्रस्तुत किया गया। (मृतक) प्रार्थी के विधिक प्रतिनिधि की ओर से न तो कोई प्रधिकार पत्र प्रस्तुत हुआ है– न ही (मृतक) प्रार्थी के स्थान पर उसके विधिक प्रतिनिधियों को प्रत्यास्थापित किये जाने हेतु प्रार्थना पत्र इस अधिकरण के समक्ष प्रस्तुत हुआ हैं। यह स्पष्ट

है कि लगभग 1 वर्ष 9 माह की अवधि व्यतीत हो जाने पर तथा 6 अवसर (मृतक) प्रार्थी के अभिभाशक को इस हेतु दिये जाने पर भी कोई परिणाम सकारात्मक नहीं निकला है।

5. इन परिस्थितियो में यह अधिकरण यह उपधारणा करने को वाध्य है कि प्रार्थी की मुत्यु हो जाने के उपरांत प्रार्थी के सम्बंध में इस अधिकरण को संदर्भित विवाद के अग्रसरण हेतु प्रार्थी का कोई विधिक प्रतिनिधि एवं परिजन इच्छुक नहीं है– अथवा वे यह समझते है कि प्रार्थी की कथित सेवा समाप्ति अब विवादित नहीं है। इस उपधारणा के परिप्रेक्ष्य में अधिकरण का यह सुविचारित अधिमत है कि उभयपक्ष के मध्य संदर्भित विवाद को अग्रसरित करने हेतु (मृतक) प्रार्थी रूपाराम के विधिक प्रतिनिधि इच्छुक नहीं है– अथवा कोई विवाद अस्तित्व में नहीं है।

अतः भारत सरकार के श्रम मंत्रालय द्वारा संदर्भित उपर्युक्त औद्योगिक विवाद का इसी प्रकार निस्तारण किया जाता हैं। पंचाट की प्रतिलिपि औद्योगिक विवाद अधिनियम, 1947 की धारा 17 (1) के अनुसरण में प्रकाषनार्थ प्रेषित की जावें।

पंचाट आज दिनांक 16 मार्च 2021 को लिखा व हस्ताक्षरित किया गया।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 27 सितम्बर, 2021

का.आ. 670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 38/2011) को प्रकाशित करती है।

[सं. एल-12012/75/2011-आईआर (बी-1)]
डी. गुहा, अवर सचिव

New Delhi, the 27th September, 2021

S.O. 670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/75/2011-IR(B-1)]
D. GUHA, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 38/2011

रेफरेन्स नं. L-12012/75/2011–IR (B-I) दिनांक 24/10/2011

पीठासीन अधिकारी : राधामोहन चतुर्वेदी
जितेन्द्र आदिवाल पुत्र श्री गोविन्द आदिवाल,
निवासी प्लॉट नं. 21 ए. एफ, हरिजन बस्ती,
बालानन्द जी का रास्ता, चांदपोल बाजार,
जिला – जयपुर, राजस्थान

बनाम

स्टेट बैंक ऑफ इण्डिया,
मुख्य कार्यकारी अधिकारी,
प्रशासनिक एंव व्यवसायिक ईकाई,
जयपुर सर्किल, तिलक मार्ग, जयपुर

प्रार्थी की ओर से : श्री कुणाल रावत – अभिभाषक

अप्रार्थीगण की ओर से : श्री उदय शर्मा – अभिभाषक

: **अधिनिर्णय** :

दिनांक : 06.04.2021

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 24.10.2011 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा (1) (d) व (2A) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित औद्योगिक विवाद इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :–

> ''Whether the action of the management of State Bank of Bikaner & Jaipur, Jaipur in terminating the service of Shri Jitendra Adiwal, part time sweeper, w.e.f.1.4.2010 is legal and justified? To what relief the workman is entitled ?''

2. दिनांक 7.5.2012 को प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत करते हुये दिनांक 01.04.2010 को विपक्षी द्वारा की गई सेवासमाप्ति को अवैध बताया। प्रार्थी की सेवासमाप्ति के पश्चात अन्य व्यक्तियों को नियुक्त करने और उन्हें नियमित कर देने का अभिकथन करते हुये विपक्षी द्वारा अधिनियम की धारा 25 (एफ), (जी) व (एच) का उल्लंघन करना व्यक्त किया। प्रार्थी ने विपक्षी द्वारा की गई सेवासमाप्ति को अवैध घोषित करते हुये समस्त विगत परिलाभों तथा सेवा में निरन्तरता मानते हुये बहाल करने का अनुतोष चाहा।

3. विपक्षी बैंक की ओर से वादोत्तर में वाद के तथ्यों को अस्वीकार किया गया और यह कहा गया कि प्रार्थी ने कभी लगातार कार्य नहीं किया और आवश्यकतानुरूप अल्प अवधि में कार्य किया जिसका भुगतान कर दिया गया है। प्रार्थी का वाद स्वीकार्य नहीं है। अतः अस्वीकार किया जावें।

4. विवाद के लम्बित रहने के दौरान स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर का अर्जन स्टेट बैंक ऑफ इण्डिया द्वारा कर लिया जाने पर, स्टेट बैंक ऑफ इण्डिया को वाद में प्रत्यास्थापित करने का आदेश दिया गया।

5. दिनांक 23.11.2020 को प्रार्थी ने एक प्रार्थना–पत्र प्रस्तुत करते हुये यह कहा कि चूंकि उसे अन्यत्र कार्य मिल चुका है इसलिये वह इस सेवामुक्ति के प्रकरण में कोई कार्यवाही नहीं चाहता है और वाद को वापस लेना चाहता है। इस निवेदन पर विपक्षी ने कोई आपत्ति नहीं की है।

6. इस स्थिति में यह स्पष्ट हो चुका है कि प्रार्थी को अन्यत्र नियोजन प्राप्त हो जाने के कारण वह विपक्षी के विरूद्ध इस अधिकरण से कोई न्यायनिर्णयन और पारिणामिक अनुतोष नहीं चाहता है। उभयपक्ष के मध्य अब कोई विवाद शेष नहीं रहा है।

7. इस स्थिति में इस अधिकरण के समक्ष इस विवाद का न्यायनिर्णयन करने की कोई विधिक अपेक्षा शेष नहीं रहती है। अतः उभयपक्ष के मध्य कोई विवाद शेष नहीं रहने के कारण न्यायनिर्णयन की कोई आवश्यकता नहीं है और यह अधिनिर्णय पारित करते हुये विवाद को समाप्त घोषित किया जाता है।

8. अतः श्रम मन्त्रालय भारत सरकार द्वारा इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

9. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 27 सितम्बर, 2021

का.आ. 671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 15/2006) को प्रकाशित करती है।

[सं. एल-12012/107/2005-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 27th September, 2021

S.O. 671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court -Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen.

[No. L-12012/107/2005-IR(B-1)]

D. GUHA, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 15/2006

रेफरेन्स नं.-L- 12012/107/2005–IR (B-1) दिनांक 23/05/2019

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

मनोज कुमार जोशी पुत्र श्री तोलारामजी जोशी,
निवासी मुकाम व पोस्ट–सुन्दनपुर,
तहसील व जिला– बॉसवाडा, राजस्थान

बनाम

1. श्री प्रबन्ध संचालक महोदय, स्टेट बैंक ऑफ इन्दौर,
यशवन्त निवास रोड, ब्लॉक नं. 5, इन्दौर मध्य प्रदेश ...पूर्ववर्ती विपक्षी

2. श्री शाखा प्रबन्धक महोदय, स्टेट बैंक ऑफ इन्दौर ...पूर्ववर्ती विपक्षी

3. शाखा प्रबंधक, स्टैट बैंक ऑफ इंडिया
वरदान शॉपिंग कॉम्पलेक्स, कुशलबाग मैदान के सामने,
बॉसवाडा राजस्थान

उपस्थित :–

प्रार्थी की तरफ से : कोई नहीं

अप्रार्थीगण की तरफ से : श्री वी. पी. जैन– अधिवक्ता

: <u>अधिनिर्णय</u> :

दिनांक : 29. 07. 2021

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 20.01.2006 को निम्नांकित औद्योगिक विवाद, औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (डी) में प्रदत्त शक्तियों के अनुसरण में इस अधिकरण को न्यायनिर्णन हेतु संदर्भित किया गया : –

> ''क्या प्रबंधक संचालक स्टेट बैंक ऑफ इन्दौर, इन्दौर /शाखा प्रबंधक स्टेट बैंक ऑफ इन्दौर शाखा बांसवाडा के द्वारा अपने कर्मकार श्री मनोज कुमार जोशी पुत्र श्री लीलाराम जोशी चतुर्थ श्रेणी कर्मचारी को मौखिक आदेश दिनांक 17.8.2004 के तहत सेवा से बर्खास्त करना उचित एवं वैध है? यदि नहीं तो कर्मकार अपने नियोजक से किस राहत को पाने का अधिकारी है?''

2. दिनांक 23.5.2019 को उक्त आदेश में संशोधन करते हुए स्टेट बैंक ऑफ इन्दौर, के स्थान पर स्टेट बैंक ऑफ इण्डिया नाम संशोधित किया गया।

3. उक्त विवाद प्राप्त होने पर उभयपक्ष को आहूत करते हुये प्रार्थी को निर्देश दिया गया की वह अपने दावे का अभिकथन प्रस्तुत करें। दिनांक 15.2.2006 को प्रार्थी ने दावे का अभिकथन प्रस्तुत किया। प्रार्थी का यह कथन है कि दिनांक 13.9.2000 को प्रार्थी को विपक्षी के शाखा प्रबंधक के अधीन सेवाकर्मी के पद पर नियुक्त किया गया। उसका वेतन 35 रु. प्रतिदिन था। प्रार्थी ने नियमित रूप से प्रातः 9.30 से शाम 5.30 तक सेवायें दी। विपक्षीगण ने 1.8.2002 से 28.2.2003 तक प्रार्थी को दिलीप कुमार जोशी के नाम से वेतन का भुगतान किया। विपक्षी का यह कार्य प्रार्थी की सेवा में व्यवधान दिखाये जाने के लिये किया गया। प्रार्थी को दिनांक 17.8.2004 को तत्कालीन शाखा प्रबंधक ने मौखिक आदेश देकर कहा कि अब तुम्हारी सेवा की आवश्यकता नहीं है। तुम कल से काम पर मत आना। प्रार्थी को इस प्रकार सेवामुक्त कर देना अवैध है, इसलिये अधिनियम के प्रावधानों के अनुसार प्रार्थी को विगत वेतन सहित सेवा में निरंतरता का लाभ देते हुये बहाल किया जावे।

4. विपक्षी ने अपने प्रतिउत्तर में यह कहा है कि विपक्षी बैंक की शाखाओं में सेवाकर्मी का पद रिक्त होने पर विहित चयन प्रक्रिया अपनाकर ही नियमानुसार नियुक्ति की जाती है किसी शाखा प्रबंधक को सेवाकर्मी के पद पर अस्थायी या स्थायी नियुक्ति देने का अधिकार नहीं है। प्रार्थी एवं विपक्षी के मध्य कर्मकार और नियोजक का संबंध नहीं है। क्योंकि प्रार्थी को कभी नियुक्त नहीं किया। प्रार्थी को मात्र पानी लाने की व्यवस्था, धुलाई–सफाई हेतु आकस्मिक कार्य को करने के लिये रखा गया और उसे किये गये कार्य का भुगतान कर दिया गया। प्रार्थी ने 13.9.2000 से 16.8.04 तक नियमित और निरन्तर रूप से कार्य नहीं किया। प्रार्थी से कभी लिपिक का कार्य नहीं लिया गया। प्रार्थी को विपक्षी द्वारा कभी सेवामुक्त नहीं किया गया। प्रार्थी ने निराधार दावा प्रस्तुत किया है अतः निरस्त किया जावें।

5. प्रार्थी ने वादोत्तर के खंडन में अतिरिक्त कथन प्रस्तुत करते हुये यह कहा है कि विपक्षी ने वास्तविक स्थिति न बताकर गलत तथ्य वर्णित किये है। प्रार्थी द्वारा प्रस्तुत डाक वितरण पुस्तिका में प्रार्थी का नाम अंकित है।

6. स्टेट बैंक ऑफ इंदौर का विलय भारत सरकार द्वारा स्टेट बैंक ऑफ इण्डिया में कर दिये जाने के परिणामस्वरूप स्टेट बैंक ऑफ इण्डिया को विपक्षी के रूप में संयोजित किया गया है।

7. प्रार्थी ने अपनी साक्ष्य में स्वंय प्रार्थी श्री मनोज कुमार जोशी को परीक्षित किया और प्रलेखीय साक्ष्य में प्रदर्श 1 से 25 तक प्रलेखों को फोटोप्रतियों के रूप में प्रदर्शित किया।

8. विपक्षी ने अपनी साक्ष्य में श्री रामपाल रैगर, मुख्य प्रबंधक, श्री विजय गुप्ता मुख्य प्रबंधक एवं उदय सिंह राजौरिया मुख्य प्रबंधक को परीक्षित किया। प्रलेखिय साक्ष्य में कोई प्रलेख प्रदर्शित नहीं किया।

9. दिनांक 15.7.2015 को प्रार्थी की और से इस विवाद में लिखित तर्क प्रस्तुत किये गये। तत्पश्चात 19.1.2016 को विपक्षीगण की ओर से भी उनके लिखित तर्क प्रस्तुत कियें गये।

10. दि. 19.7.2021 को प्रार्थी की और से कोई उपस्थित नहीं हुआ। इसके पूर्व भी प्रार्थी पक्ष 25.6.2019 से लगातार अनुपस्थित रहा है। विपक्षी अधिवक्ता ने यह निवेदन किया कि चूंकि लिखित तर्क उभयपक्ष द्वारा प्रस्तुत किये जा चुके है इसलिये उन लिखित तर्कों के आधार पर विवाद का अधिनिर्णयन किया जावें। इस निवेदन को स्वीकार कर लिखित तर्कों के आधार पर साक्ष्य का परिशीलन किया गया तथा विपक्षी की ओर से निम्नांकित निर्णयों में पारित माननीय उच्चतम न्यायालय के अधिमत पर ध्यानपूर्वक मनन किया गया। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये है :–

(1) (2006) 2 SCC,702 एम.पी. हाउसिंग बोर्ड व अन्य बनाम मनोज श्री वास्तव

(2) (2008) 1 SCC, 575 मेहबूब दीपक बनाम नगर पंचायत गजरौला

(3) (2014) 7 SCC 177 भारत संचार निगत लि. बनाम भूरूमल

11. मैनें उभयपक्ष के परस्पर विरोधी लिखित तर्कों पर ध्यानर्पूक साक्ष्य के संदर्भ में मनन किया।

12. प्रार्थी का यह तर्क है कि विपक्षी साक्षीगण ने यह स्वीकार किया है कि प्रार्थी बैंक में पीने का पानी भरने एवं सफाई करने का कार्य आवश्यकतानुसार करता था। यह कार्य निश्चित रूप से स्थायी प्रकृति का है। जिसे प्रतिदिन किया जाता है। प्रार्थी ने अपनी साक्ष्य से यह प्रमाणित कर दिया है कि उसने विपक्षी के अधीन 13.9.2000 से 17.8.2004 तक लगातार कार्य किया है। इसलिये प्रार्थी को सेवामुक्त करने के पूर्व अधिनियम के प्रावधानों का अनुपालन किया जाना अनिवार्य था। प्रार्थी ने अपने तर्क में यह भी वर्णित किया है कि प्रार्थी की योग्यता एवं अनुभव के आधार पर बैंक आफ महाराष्ट् द्वारा प्रार्थी को चतुर्थ श्रेणी कर्मचारी के पद पर नियमित रूप से 11.8.04 से नियुक्त कर दिया गया है। अतः प्रार्थी की सेवामुक्ति को अवैध घोषित कर उसे सेवा में निरन्तरता सहित बहाल किया जावें।

13. विपक्षीगण ने अपने तर्कों में प्रार्थी को कभी भी नियुत न करने और 17.8.04 को सेवामुक्त करने के तथ्य को अस्वीकार किया है। उनका यह भी तर्क है कि प्रार्थी ने दावे में यह कहीं नहीं कहा है कि सेवामुक्ति के पूर्ववर्ती 12 महिनों में उसने 240 दिन निरन्तर सेवा की हो। आकस्मिक कार्य करने मात्र से प्रार्थी को कोई विधिक अधिकार प्राप्त नहीं हो जाता। विपक्षी बैंक ने कभी भी प्रार्थी को दिलीप जोशी के नाम से वेतन भुगतान नहीं किया। प्रार्थी ने न तो नियुक्ति हेतु आवेदन किया ना कोई साक्षात्कार दिया और ना ही विपक्षी ने उसकी नियुक्ति की। प्रार्थी और विपक्षी के बीच नियोजक और कर्मकार के संबंध नहीं है। इसलिये प्रार्थी विपक्षी से अधिनियम की धारा 25(एफ) एवं धारा 25 (एन) की अनुपालना करने की अपेक्षा नहीं कर सकता।

14. मैनें उभयपक्ष के तर्कों एवं न्यायिक दृष्टान्तों में पारित विधि–पर मनन किया। इस विवाद में निम्नांकित विचारणीय बिन्दु उत्पन्न हुये है।

विचारणोय बिंदु सं. 1 :– क्या प्रार्थी को विपक्षी ने 13.9.2000 को सेवाकर्मी (पियोन) के पद पर नियुक्त किया तथा प्रार्थी ने दि. 17.8.2004 के पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन लगातार कार्य किया ? ...प्रार्थी

विचारणीय बिंदु सं. 2 :– क्या विपक्षी ने दि. 17.8.04 को प्रार्थी की सेवा समाप्त करने के पूर्व अधिनियम की धारा 25 (एफ) के प्रावधानो का अनुपालन नहीं किया, इसलिये सेवामुक्ति अवैध है ? ...प्रार्थी

विचारणीय बिंदु सं. 3 अनुतोष ?

प्रत्येक बिंदु पर विवेचित निष्कर्ष इस प्रकार है।

विचारणीय बिंदु सं. 1 :– इस विचारणीय बिन्दु को अपने पक्ष में प्रमाणित करने का सिद्धिभार प्रार्थी पर है। प्रार्थी ने अपने अभिवचनों और शपथ पर किये गये कथनों में यह नहीं कहा है कि उसने विपक्षी के अधीन, सेवासमाप्ति तिथि के

पूर्ववर्ती एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक निरन्तर सेवा की है। प्रार्थी मनोज कुमार जोशी ने अपने कथन में यह कहा है कि उसने दिनांक 13.9.2000 से 16.8.2004 तक नियमित एवं निरंतर रूप से विपक्षी के यहां सेवा की। इस तथ्य के प्रमाण–स्वरूप प्रार्थी ने प्रदर्श 1 से 25 तक जो प्रलेख प्रदर्शित किये है वे पत्र वितरण पुस्तिका (पियोन बुक) के पृष्ठों की फोटोप्रतियां है। जिनमें संदेशवाहक के नाम के स्थान पर श्री मनोज कुमार जोशी का नाम अंकित किया गया है। उल्लेखनीय है कि पत्र वितरण पुस्तिका के प्रत्येक पृष्ठ पर तिथि अंकित नहीं है, और यदि तर्क के लिये यह मान भी लिया जावें कि पत्र वितरण पुस्तिका विपक्षी बैंक की है तो भी इससे यह प्रमाण नहीं मिलता कि प्रार्थी को दिनांक 13.9.2000 को विपक्षी ने सेवाकर्मी के पद पर नियुक्त किया है। प्रार्थी मनोज कुमार जोशी अपने प्रतिपरीक्षण में स्वीकार करता है कि उसने नौकरी हेतु आवेदन नहीं किया। उसने नियोजन कार्यालय में नाम भी नहीं लिखवाया। बैंक में नौकरी हेतु कोई विज्ञप्ति नहीं निकाली। उसे कोई साक्षात्कार व नियुक्ति पत्र भी नहीं मिला। प्रार्थी का कथन है कि उसे मासिक भुगतान दिया जाता था और रसीदें पेश की है। लेकिन प्रार्थी के साक्ष्य में ऐसी कोई भुगतान रसीद व बाउचर पेश नहीं हुआ है। प्रार्थी का यह कथन भी किसी साक्ष्य से पुष्ट नहीं हुआ है कि उसे विपक्षी द्वारा दिलीप कुमार के नाम से लगभग 6 माह तक वेतन भुगतान किया गया है। प्रार्थी का यह कथन है कि उसे मौखिक आदेश से नियुक्त किया गया और सेवामुक्त किया गया किसी प्रकार विश्वसनीय नहीं है, क्योंकि बैंक के अधीन नियुक्ति हेतु विहित चयन प्रक्रिया निर्धारित है और उसका पालन किये बिना कोई नियुक्ति वैध नहीं हो सकती है। माननीय सर्वोच्च न्यायालय ने भारत संचार निगम बनाम भुरूमल के निर्णय में यह अवधारित किया है कि धारा 25 (एफ) अधिनियम के प्रावधानों का संरक्षण श्रमिक को तब ही मिल सकता है जब उसने विपक्षी नियोक्ता के अधीन एक केलेण्डर वर्ष की अवधि में 240 दिन सेवा पूर्ण की हो।

15. माननीय उच्चतम न्यायालय ने महबूब दीपक बनाम नगर पंचायत गजरौला के निर्णय में यह कहा है कि स्थानीय प्राधिकारी द्वारा नियुक्ति संबंधी प्रावधानों का पालन किये बिना कोई नियुक्ति नहीं की जा सकती। नियमों से परे की गई नियुक्ति अवैध है।

16. इसी क्रम में माननीय उच्चतम न्यायालय ने एम.पी. हाउसिंग बोर्ड व अन्य बनाम मनोज श्री वास्तव के निर्णय में यह मार्गदर्शन दिया है कि दैनिक वेतन भोगी को तब तक कोई विधिक अधिकार प्राप्त नहीं होता, जब तक वह एक स्वीकृत रिक्त पद के अधीन नियुक्त न किया जावें। इन निर्णयों में पारित विधि और साक्ष्य के विवेचन से यह स्पष्ट है कि प्रार्थी को अवैध छंटनी के विरूद्ध अधिनियम की धारा 25 (एफ) का संरक्षण तब ही दिया जा सकता है जब वह विपक्षीगण के अधीन सेवामुक्ति के पूर्व एक केलेण्डर वर्ष की अवधि में 240 दिन की सेवा पूर्ण कर लेना साक्ष्य से प्रमाणित करें। चूंकि प्रार्थी इस सिद्धिभार को उन्मोचित नहीं कर सका है, इसलिये पत्र वितरण पंजिका मात्र के पृष्ठों की साक्ष्य के आधार पर यह प्रमाणित नहीं होता है कि प्रार्थी को विपक्षी द्वारा दिनांक 13.9.2004 को सेवा में नियुक्त किया गया हो एवं प्रार्थी को 17.8.04 को मौखिक रूप से सेवामुक्त भी किया गया हो। विपक्षी के साक्षियों ने अपने सशपथ कथनों में यह कहा है कि प्रार्थी व विपक्षी के बीच नियोजक और कर्मकार के संबंध नहीं रहे हैं, इन कथनों को किसी प्रकार खंडित करने में प्रार्थी सफल नहीं हुआ है। इस विवेचन के उपरांत यह विचारणीय बिंदु प्रार्थी के विरूद्ध निर्णित किया जाता है।

17. **विचारणीय बिंदु सं. 2** :– विचारणीय बिंदु सं. 1 पर प्राप्त विवोचित निष्कर्ष से यह प्रमाणित हुआ है कि प्रार्थी की नियुक्ति एवं सेवासमाप्ति विपक्षी बैंक द्वारा किया जाना प्रमाणित नहीं हुआ है। इसलिये उभयपक्ष के बीच नियोक्ता और कर्मकार का संबंध भी अप्रमाणित रह जाता है। इन परिस्थितियों में विपक्षी द्वारा, कथित सेवा समाप्ति जो कि प्रमाणित नहीं है, के पूर्व अधिनियम की धारा 25 (एफ) के प्रावधानों का अनुपालन करते हुये नोटिस अथवा नोटिस वेतन, एवं छंटनी प्रतिकर का भुगतान प्रार्थी को करने की कोई विधिक आवश्यक उत्पन ही नहीं होती है। अतः यह बिंदु प्रार्थी के विरूद्ध निर्णित किया जाता है।

विचारणीय बिंदु सं. 3 :– चूंकि प्रार्थी और विपक्षी के मध्य नियोजक और कर्मकार के संबंध अस्तित्व में होना और विपक्षी द्वारा प्रार्थी को सेवामुक्त करना प्रमाणित नहीं हुआ है। इसलिये प्रार्थी विपक्षीगण से अधिनियम के अंतर्गत देय कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

18. श्रम मन्त्रालय भारत सरकार द्वारा इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

19. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रजिस्ट्रार, लक्ष्मीबाई राष्ट्रीय शारीरिक शिक्षा संस्थान, ग्वालियर; मैसर्स ईगल हंटर सॉल्यूशंस लिमिटेड, नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री अशोक गोस्वामी, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/6/2016) को जैसा कि अनुलग्नक में दिखाया गया है,प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 28.09.2021 को प्राप्त हुआ था।

[सं. एल-42012/193/2015- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 672.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/6/2016) of the Central Government Industrial Tribunal-cum-Labour Court-Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Registrar, Laxmibai Rashtriya Shareerik Siksha Sansthan,Gwalior.; M/s. Eagle Hunter Solutions Ltd., New Delhi and Ashok Goswami, worker which was received along with soft copy of the award by the Central Government on 28.09.2021.

[No. L-42012/193/2015-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/6/2016

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Ashok Goswami (INTUC)
In front of Madhav Dispensary
Lalaitpur colony, Lashkar,
Gwalior-474001 ... Workman

Versus

The Registrar,
Laxmibai Rashtriya Shareerik Siksha Sansthan,
Shakti Nagar,
Gwalior-474002.

2.M/s. Eagle Hunter Solutions Ltd.,
Eagle House,61-C, Kalu Sarai, Sarvpriya Bihar,
New Delhi-110016. ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 15/12/2015 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-42012/193/2015(IR(DU).The dispute under reference relates to:

> "***Kya M/s. Eagle Hunter Solutions Ltd. Dwara Laxmibai Rashtriya Shareek Shiksha Sansthan, Gwalior mein karyarat sursaksha guard sarv Shri Omprakash, Shri Ramgopal evan Shri Akhilesh Singh Bhadoriya ko adyogik vivad adhiniyam ke pravdhano ka palan kiye bina naukri se nekale haane nyayouchit hai. Yadi nahi to karmkar kes anutosh ke adhikari hain? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Notices were duly served on them.

2. None of the parties appeared during hearing though many dates were given. Neither statement of claim nor statement of defense has been filed by either of the parties, hence closing the opportunity to file statement of claim/defense, the award is being passed.

3. **The reference is the point for determination in the case in hand.**

4. The initial burden to prove his case lies on the workman. In absence of any evidence in support of claim or any statement, his claim cannot be held proved.

5. Hence holding the case of workman not proved the reference is answered against the workman.

6. Accordingly, the following award is passed:-

A. The action of the management is held to be just and proper.

B. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA Presiding Officer

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 673.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सहायक अभियंता, रेलवे विद्युतीकरण परियोजना भोपाल (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री विनय कुमार, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/59/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 28.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/26/2014- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 673.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/59/2014) of the Central Government Industrial Tribunal-cum-Labour Court-Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Assistant Engineer, Railway Electrification Project, Bhopal (M.P.) and Shri Vinay Kumar, worker which was received along with soft copy of the award by the Central Government on 28.09.2021.

[No. L-40012/26/2014-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/2014

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Vinay Kumar
Jhuggi No.511, Vallabh Nagar No.-2
Behind Satpura,
Near Gupta Kirana Store,
Bhopal (M.P.) ... Workman

Versus

The Assistant Engineer,
Railway Electrification Project
Bhopal (M.P.) ... Management

AWARD

(Passed on this 9th day of September-2021)

As per letter dated 15/7/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/26/2014-IR(DU). The dispute under reference relates to:

> "***Whether the claim of Shri Vinay Kumar regarding his work under Assistant Engineer, Railway Electrification Project, Bhopal submitted to Assistant Engineer, Bharat Sanchar Nigam Ltd. is correct? If so, the verbal termination by Assistant Engineer, Bharat Sanchar Nigam Ltd. Govindpura, Bhopal in the year 1991 was justified? If not to what relief Shri Vinay Kumar is entitled for ? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. The parties have filed their respective claim/defence.

2. The case of the workman as stated in his statement of claim is that he was engaged with the Management as M.R.worker enrolled as M.R.51/23 on 1-9-1986 and continuously worked with the Management till 31-1-1991 at different places to the satisfaction of his Superiors and with full devotion. His services were discontinued by the management on 31-1-1991. He was in continuous engagement of the Management from the date of his engagement till 31-1-1991 the date of his dis-engagement and had completed 240 days in continuous service of Management in every year including the year preceding the date of his disengagement. He also alleged that the workman Mangilal Thakur, Ram, Raghuraj Singh, Krishnapratap Singh and Balbir Singh and Others mentioned in para-5 of statement of claim were not disengaged though they were engaged later on, in point of time. Hence the principle of first go and last come was not followed by the Management. No seniority list as mentioned under Rule 77 of Industrial Dispute Rules was prepared by the Management, hence his this dis-engagement was violative of Section 25G also disengagement was violative of Section 25N of the 'Act because no approval for dis-engagement was obtained by Management before disengaging the workman. Further it was alleged that Mangilal, Dhaniram, Ramnaresh, Sanjay Sharma and Others were taken in engagement after his disengagement, which is violative of Section 25H of the "Act. Accordingly, it has been prayed that setting aside his disengagement the workman be reinstated with all back wages and benefits.

3. The case of management is mainly that the workman was never engaged by the Management of Bharat Sanchar Nigam Ltd.Bhopal, hence there is no question of his disengagement by BSNL. Accordingly, it has been prayed that the reference be answered against the workman.

4. In evidence, the workman has examined himself on oath and has been cross-examined. He has proved the original Service Card total 4 pages Exhibit W-1.

5. The Management has examined its witness Arun Kumar Balpandey Divisional Engineer who has been cross-examined by workman.

6. I have heard arguments of Mrs. Ashok Shrivastava, learned counsel for workman and Shri R.S.Khare, learned counsel for the management and have gone through the record as well.

7. Following issues have arisen for determination in the case in hand, on perusal of record, in the light of rival arguments:-

"1. Whether the workman was ever engaged by the Management of BSNL.?

2. Whether the dis-engagement of the workman is justified in law and fact.?"

3. Subject to finding on Issue No.1 and Issue No.2, whether the workman is entitled to any relief.?"

8. **ISSUE NO.1 And No.2:-**

Since these two issues are interrelated they are being taken together. According, to the workman, he was engaged with the Management of BSNL whereas the case of Management is that he was engaged in the Railway Electrification Project which is not a component of the Management of BSNL. Both the sides have corroborated their stand on this point in their respective affidavits. The workman has stated that the project was being run by BSNL, hence according to the learned counsel for workman, he would be deemed working for the Management of BSNL. The Personal record of the workman Exhibit W-1 filed and proved goes to show that

his services have been verified by the Assistant Engineer, Telecommunication, Bhopal and Junior Telecommunication Officer, Bhopal. Also by Junior Telecom Officer,though working in Railway electrification Project, the case of Management that the workman was not working with the Management of BSNL, cannot be accepted. On the basis of evidence on record as mentioned, it is held proved that the workman was engaged by the management of BSNL in its Railway electrification Project, accordingly, the workman is held an employee within the meaning of Industrial Disputes Act,1947 of Management of BSNL. **Issue No.1 is answered accordingly**.

9. As regards, Issue No.2, the workman has challenged his disengagement on following grounds:-

A. Being violative of Section 25F of the Industrial Disputes Act, 1947.

B. Being violative of Section 25G of the Industrial Disputes Act, 1947.

C. Being violative of Section 25N of the Industrial Disputes Act, 1947.

D. Being violative of Section 25H of the Industrial Disputes Act, 1947.

10. The relevant provision of the Act requires to be referred before entering into any discussion which is as follows, Section2(oo), Section 25(B), Section 25(G), Section 25(N), Section 25(F):-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

Section 25 B:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

[25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for

not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

11. According to the workman, he has been in continuous engagement of Management since the date of his appointment on 1-9-1986 till 31-1-1991 and has worked for more than 240 days in every year, including the year preceding the date of his dis-engagement, whereas the management has denied this fact. The personal record Exhibit W-1 in original and in photocopy filed, goes to show that the workman had worked for 31 days in January-1990, 26 days in February-1990, 31 days in March-1990, 21 days in April-1990, 31days in May-1990, 30 days in October-1990, 30 days in November-1990 , 31 days in December-1990 and 21 days in January-1991, which totals at 252 days, hence the fact the workman was in continuous engagement of the Management for a period of 240 days in the year preceding the date of his dis-engagement is held proved. It is not disputed that no

notice or compensation was given to the workman on his dis-engagement, hence the dis-engagement of the workman is held violative of Section 25F of the Act.

12. A judicial notice can be taken of the fact that there are more than 300 workman working with the Management of BSNL. There is nothing on record to indicate that prior approval or permission of appropriate Government was taken by Management before his dis-engagement, hence the dis-engagement of the workman is further in violation of Section 25N of the Act. As regards the other two grounds being violative of Section 25 G and Section 25H, in absence of corroborative evidence on this point, it cannot be said that the dis-engagement of the workman is violative of these two provisions.

13. On the basis of above, discussion, the disengagement of workman is held unjustified in law and fact . **Issue No.1 and 2 are answered accordingly**.

14. **ISSUE NO.3:-**

Learned counsel for Management has referred to case law **Assistant Engineer, Rajasthan Development Corporation and Another Vs. Gitam Singh (2013)5 SCC 136**," where in it has been laid down that service of a daily wager need not be regularized and he need not be reinstated because he is not appointed as per Rules against any regular vacancy". Another case law **Secretary State of Karnataka and Others Vs. Umadevi and Others (2006) 4 SCC1**, also laid down the same principle. In the case of **M.P.State Agro Industries Development Corporation Ltd. and Another Vs. S.C.Pandey (2006)2 SCC 716** affirms this preposition of law.

15. In the case in hand, though the workman has worked as a daily wager for a long period since 1986 to 1991 but he was not engaged against any regular vacancy nor was he appointed following any selection procedure. As the dis-engagement of the workman has been against law, the question arises as to what relief the workman is entitled to. Learned Counsel has relied on the case of **Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya**(2013) 10 SCC 324(2013(6) SLR 642(SC) broad principles in this respect were laid down by the Hon'ble Apex Court which are as follows:-

"38. The propositions which can be culled out from the aforementioned judgments are :

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/ workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully

justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to, the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V.Employees of Hindustan TinWorks Private Limited* (supra).

38.7 The observation made in*J.K. Synthetics Ltd. V. K.P.Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in *Tapash Kumar Paul V. BSNL (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)],* it is held :-

"Therefore, in the light of the decision of this Court in Deepali Gundu's case (supra) which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma's case (supra) and Hindustan Tin Works Pvt. Ltd. (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own."

16. Hence, keeping in view the period of engagement and the fact that the workman was only a casual labour not selected against any regular vacancy as per recruitment rules, his reinstatement will not be justified in law. Accordingly, he is held entitled to a lump sum compensation of **Rs.1,00,000/-(Rupees one lakh)** to be paid within 60 days from the date of publication of Award failing which interest @ 9% from the date of Award till payment.

17. On the basis of the above discussion, following award is passed:-

A. ***The verbal termination by Assistant Engineer, Bharat Sanchar Nigam Ltd. Govindpura, Bhopal of workman Vinay Kumar in the year 1991 is held not proper and justified in law.***

B. The workman is held entitled to a lump sum compensation of Rs.1,00,000/-(Rupees one lakh) to be paid within 60 days from the date of publication of Award, failing which interest @ 9% from the date of Award till payment.

C. Parties to bear their own costs.

18. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, PRESIDING OFFICER

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार जिला प्रबंधक, भारत संचार निगम लिमिटेड शिवपुरी, (म.प्र.)के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सीताराम, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/46/2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 28.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/24/2014- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 674.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/46/2014) of the Central Government Industrial Tribunal-cum-Labour Court - Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Telecom District Manager, Bharat Sanchar Nigam Ltd. Shivpuri, (M.P.) and Shri Seetaram, worker which was received along with soft copy of the award by the Central Government on 28.09.2021.

[No. L-40012/24/2014-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/46/2014

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Seetaram,
S/o Gajadhar Prasad,
Resident of Vill-Sesai,
Sadak Pargana, Kolaras,
District Shivpuri (M.P.) ... Workman

Versus

The Telecom District Manager,
Bharat Sanchar Nigam Ltd.
Shivpuri, (M.P.) ... Management

AWARD

(Passed on this 2nd day of September-2021)

1. As per letter dated 28/5/2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/24/2014-IR(DU). The dispute under reference relates to:

> "***Whether the claim of Shri Seetaram Regarding his work under telecom District Manager, Bharat Sanchar Nigam Ltd., Shivpuri from 1992 to March-200 is correct, if so the oral termination by TDM, Bharat Sanchar Nitgam Ltd. Shivpuri in March,2005 was justified??If not, to what relief Shri Seetaram is entitled for ?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The case of the workman as stated in his statement of claim is that he was illegally retrenched by Management on 1-4-2005 without notice or compensation. The principle of first come and last go was also not followed, though he was in continuous engagement of Management as a casual labour since the year 1992. The

workman has sought the relief of his reinstatement with all back wages and benefits setting aside his retrenchment.

3. The Management has denied the claim of workman and has stated that he was never engaged in any capacity by the Management. He never worked continuously for a period of 240 days in the year preceding the date of his alleged dis-engagement. Accordingly, the Management has prayed that the reference be answered against the workman.

4. During the course of proceeding the workman never turned up after filing statement of claim. He did not file any evidence , the case proceeded ex-parte against the workman vide order dated 10-2-2020.

5. The Management has filed affidavit of its witness Shri Ashok Kumar Verma Divisional Engineer in support of its case.

6. Arguments were also heard ex-parte by me and record was perused.

7. <u>The Reference is the point for determination, in the case in hand.</u>

8. The relevant provisions of Section 2(00), Section 25-B, Section 25-F and Section 25-G of the Industrial Disputes Act,1947 requires to be referred here and is reproduced as under:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

<u>Section 25 B:-</u>

<u>Definition of continuous service</u>.-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

<u>25F. Conditions precedent to retrenchment of workmen.-</u> No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

<u>25G. Procedure for retrenchment</u>.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be

employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

9. The initial burden to prove his claim is on the workman. He has miserably failed to discharge this initial burden. Hence holding the claim of the workman not proved, the workman is held entitled to no relief.

10. On the basis of the above discussion, following award is passed:-

A. The claim of Shri Seetaram Regarding his work under telecom District Manager, Bharat Sanchar Nigam Ltd., Shivpuri from 1992 to March-2005 is held not legal and justified.

B. The workman is held entitled to no relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 675.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आयकर आयुक्त, बिलासपुर (छ.ग.); निदेशक मैसर्स क्लीनटेक सर्विस एंड वर्कफोर्स, रायपुर (छ.ग.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री दिगंबर सिंह सिद्दर, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय-जबलपुर के पंचाट (संदर्भ संख्या CGIT/LC/R/39/2019) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 28.09.2021 को प्राप्त हुआ था।

[सं. एल-42012/155/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 675.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/39/2019) of the Central Government Industrial Tribunal-cum-Labour Court - Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Income Tax Commissioner, Bilaspur (C.G.); The Director, M/s. Cleantech Service & Workforce, Raipur (C.G.) and Shri Digambar Singh Siddar, worker which was received along with soft copy of the award by the Central Government on 28.09.2021.

[No. L-42012/155/2018-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/2019

Present: P. K. Srivastava, H.J.S..(Retd)

The Digambar Singh Siddar
S/o Sh. Samaru Ram Siddar
H.No.71, Kalar Mohalla,
Ward No.5, Dixcy
P.O.sigansara, District Janjir
Champa (C.G)-495671 ... Workman

Versus

The Income Tax Commissioner,
Aayakar Bhawan, Vyapar Vihar,
Bilaspur (C.G.)-495001

2. The Director M/s. Cleantech
Service & Workforce, Shankar Nagar,
Near Water Tanki,
Raipur (CG)-495002 ... Management

AWARD
(Passed on this 14th day of September-2021)

As per letter dated 4/2/2019 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/155/2018-IR(DU). The dispute under reference relates to:

"***Whether the action on the part of the coantractor M/s. Cleantech Service & workforce, Raipur Engaged by the income tax department, Bilaspur in terminating the workman namely Shri Digambar Singh Siddar in the post of Chowkidar and without paying the terminal benefits and without complying Section 25F of ID Act is appropriate and justified? If not, what relief the terminated workman Shri Digambar Singh Siddar is enrtitled to?***

2. Whether the workman in the dispute initially engaged by the income tax department and later on engaged under the contractor is entitled for regularisation in the recruitment process?"."

1. After registering the case on the basis of reference, notices were sent to the parties. None of the parties appeared inspite of sufficient notice nor did any of the parties have filed any statement of claim/defence.

2. In such circumstances, when the parties are not prosecuting their case, inspite of service and keeping in view the fact that the primary burden to prove the case lies on the workman, this Tribunal is constrained to hold that the claim of workman is not proved and accordingly the claim of workman is held not justified in law or fact. Also it is held that the workman is entitled to no relief.

3. Accordingly, following award is passed:-

"A. The action on the part of the coantractor M/s. Cleantech Service & workforce, Raipur Engaged by the income tax department, Bilaspur in terminating the workman namely Shri Digambar Singh Siddar in the post of Chowkidar and without paying the terminal benefits and without complying Section 25F of ID Act is held to be proper and justified"

B. The workman is held entitled to no relief.

4. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 676.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–2, नई दिल्ली के पंचाट (संदर्भ संख्या 174/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-11012/42/2008-आईआर (सीएम-1)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 676.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, New Delhi (Ref. No. 174 of 2012) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd., and their workmen which was received by the Central Government on 24.09.2021.

[No. L-11012/42/2008-IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 174/2012

Date of Passing Award- 25th August, 2021

Between:

The Secretary,
Indian Airlines Kamgar Sangathan,
F-II/236, Madan Gir,
New Delhi-110062. ... Workman

Versus

The Executive Director,
M/s. Air India,
Now National Aviation Company of India Ltd.,
Airlines House, 113, Gurudwara Rakab Ganj Road,
New Delhi- 110001. ... Management

Appearances:-

Shri Ajit Singh (A/R) : For the Workman.

Shri Ranjan Jha and Gautam Dutta (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of M/s. Air India and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 11012/42/2008 (IR(CM-I) dated 06.12.2012 to this tribunal for adjudication to the following effect.

"Whether the management of National Aviation Co. Ltd. in denying the following demands of the Indian Airlines Kamgar Sangathan, New Delhi is legal and justified:

Demand No.1:- Arrear of overtime with interest since 1997, of the same had not extended at double the rate up to year 2006.

Demand No.2:- payment of Bonus with interest for the financial year 2005-2006.

Demand No.3:-Payment of leaves and Provident Fund as per rules notified by the Department of Personnel and Training vide office memorandum No. 51016/2/90 Estt. (C) dated 10.09.1993 from back date.

Demand No. 4:- All the benefits of temporary status with interest on completion of 240 days service as per above mentioned office memorandum.

Demand No.5:- Benefits of productivity Link incentive (PLI) be given since inception. To what relief are the affected workmen entitled?''

The claimant Union representing the aggrieved workmen, in its claim statement has stated that the management i.e. erstwhile Indian Airlines now known as Air India Limited had appointed 325 casual workers in its Delhi Region including 195 casual workers of the select panel of 1990 and other select panel prepared thereafter against the permanent post/Regular vacancies. They were engaged to discharge the duties of loader, helper, peon, drivers, typist and Safaiwala etc. in accordance to the recruitment and promotion rule of the company. They were allowed to work as casual workers for a pretty long time which spans over 17 years or more without any break. Pursuant to office memorandum number 51016/2/90-ESTT dated 10.09.93 of DOPT, Government of India, those casual workers are entitled to be granted temporary status with all benefits of regular workers and at the same time the benefits granted to them as casual workers shall not be withdrawn. Thus, the facilities like conveyance benefit, canteen facility are to be continued alongwith benefits like paid weekly off, annual paid leaves, medical benefits, dearness allowance, conveyance allowance etc w.e.f 10th September 1993. But the management though conferred temporary status to the causal workers did not pay them their legitimate dues. Though they were paid overtime dues since 1997 it was paid at double the rate only since 2006. Thus, their dues of overtime from 1997 to 2006 at double the rate is pending and they are entitled to the arrear of overtime wage alongwith interest @ of 18% per annum for the period from 1997 to 2006. Similarly

the management has shown discrimination in grant of bonus to the employees for the year 2005- 2006 which is due to be paid with interest @18% per annum. It has further been stated that bonus which was given to some of the employees in 2005-2006 was according to the ceiling amount which is illegal though they are entitled to the bonus @ 8.33% amounting to Rs. 5780/-. The bonus since has been paid @2500/-, the differential amount alongwith the interest are due to be paid. The claimant/union had raised a complaint before the PF Commissioner alleging non coverage of the temporary status workers under the EPF scheme and a direction to that effect was given to the management. The later failed to comply the same. Since, the casual workers have been granted temporary status they are entitled to be covered under the PF scheme of the management. The other allegation leveled in this claim petition is that the temporary status employees have been denied the benefit of leave as per service rule of the management at par with the regular employees which is illegal. The management has also omitted to grant the temporary status to many of the employees who have completed 240 days of continuous service in a calendar year. Having failed to convince the management in respect of their demand the aggrieved temporary status employees had filed a writ petition before the Hon'ble High Court of Delhi. The Hon'ble Court in their judgment directed the management to consider the causal employees for regularization against vacancy in Group-D post. By necessary implication the Hon'ble High Court had directed the management to extend the benefit of regular employees to the temporary status employees. The Union representing the workmen raised a dispute before the Labour Commissioner alleging non compliance of the direction given by the Hon'ble High Court and the direction issued in the office memorandum of 1993. Though a conciliation proceeding was initiated, for the non cooperation of the management no fruitful result could be achieved and the Appropriate Government referred the matter for adjudication. The claimants in this claim petition have prayed for a direction to the management to allow the demands raised by the union and release all pecuniary benefits raised and demanded alongwith interest @18% per annum together with all other benefits as would deem fit.

The management of Air India Limited appeared and filed its WS refutting the claim advanced by the claimant /union. The claim advanced has been challenged on the point of maintainability on the ground that the claim of equal benefit as of regular employee has already been decided by the Hon'ble High Court of Delhi and confirmed by the Supreme Court of India. It has been stated that the workmen who were empaneled in the year 1990 by the erstwhile Indian Airlines were the daily rated casual workers and not the casual workers as claimed by the claimant/union. No list was prepared in the year 1990 for engagement of those casual workers against permanent post/regular vacancies. While denying the claim of the union that the casual workers were granted temporary status the management has stated that the members of the Union who are not daily rated casual workers are not entitled to the benefit under the scheme w.e.f 10.09.1993. The casual workers have been provided with all the benefits they are entitled to under the Rule and policy of the management. The management has denied the claim of the union that the workmen of this proceeding are entitled to over time wage at the double rate since the year 1997 nor they are entitled to the arrear of the same from 1997 to 2006 with interest @18% per annum till the actual disbursement. It is the specific stand taken by the management that the workmen were never conferred temporary status and the bonus were paid to the daily rated causal employees in the year 2005, 2006 as per the policy of the management. The bonus cannot be claimed as a matter of right as the same is dependent on the financial status of the company. While denying about any other arrear on the bonus the management has stated that the claim for alleged deficit bonus is not maintainable. Similarly the claim of the workmen to be covered under the provision of the EPF Act has also been denied by the management. The management has further pleaded that the daily rated casual employees are being paid wage according to their entitlement and in accordance with the company policy which commensurate the minimum wage rate prescribed by the appropriate government. Thereby the management has pleaded that the claim petition is misconceived and the relief sought for cannot be granted. The management has also challenged the eligibility of the workman union to espouse the cause of the daily rated casual workers of the management.

The claimant union filed replication denying the stand taken by the management in toto.

On the basis of the pleadings of the parties following issues are hereby framed:-

1. Whether the action of the management of National Aviation Co. Ltd. in denying the following demands of the Indian Airlines Kamgar Sangathan, New Delhi is legal and justified:

   Demand No.1:- Arrear of overtime with interest since 1997, of the same had not extended at double the rate up to year 2006.

   Demand No.2:- payment of Bonus with interest for the financial year 2005-2006.

   Demand No.3:-Payment of leaves and Provident Fund as per rules notified by the Department of personnel and Training vide office memorandum No. 51016/2/90 Estt. (C) dated 10.09.1993 from back date.

   Demand No. 4:- All the benefits of temporary status with interest on completion of 240 days service as per above mentioned office memorandum.

Demand No.5:- Benefits of productivity Link incentive (PLI) be given since inception. To what relief are the affected workmen entitled? If so its effects?

2. Whether workmen are entitled to any relief ? If so its effects?

At the outset of the argument the Ld. A/R for the management submitted that the claim advanced by the Union is based upon misconception of the fact and law. Moreover, the union representing the workmen is not the recognized union and the cause was never espoused. Hence, the proceeding is not maintainable. He also argued that, the present proceeding is hit under the Principles of res judicata since the claim advanced in this proceeding were also advanced by the same set of employees before the Hon'ble High Court wherein they had demanded regularization and equal pay with the regular employees. The Hon'ble High Court of Delhi in their order passed in WP(C) No. 2644 of 1997 rejected the plea and the matter was taken to the Hon'ble Supreme Court in appeal. But the Hon'ble Supreme Court also dismissed the claim and confirmed the order of the Hon'ble High Court. The judgment of the Hon'ble High Court passed in WPC No. 4133 of 1994 and WPC No. 2644 of 1997 is binding on the parties and the matter since has been adjudicated, the present proceeding is hit under the Principles of res judicata.

No issues have been framed on these aspects challenging maintainability as advanced by the management. Hence, it is felt expedient to give a finding on the point of espousal and res judicata.

The Ld. A/R for the claimants submitted that admittedly the Union which has filed the claim petition, though registered is not the recognized union by the management which is a deliberate action of the management to put a check on the legitimate demand of the poor workmen. Citing several judgments of the Hon'ble High Courts he submitted that if a considerable number of members of an unrecognized union advance a claim the same cannot be rejected for want of espousal. While pointing out the list of members issued to the management and again obtained through RTI he submitted that the union has more than 325 members initially which was added by 230 more. Hence the claimant union has the advantage of representing the majority number of employees even though they said union has not been recognized by the management. While placing reliance in the case of **Rohtak General Transport vs. Rohtak General Transport workers union reported in 1962(1)Lab L.J 634(SC)** he submitted that the Hon'ble Apex Court in this case treated 5 workmen as the substantial number for the purpose of espousal. In this proceeding there is no dispute that the grievance of the entire section of casual workers numbering 325 has been ventilated in this proceeding. The list of the members of the Union intimated to the management has been obtained by RTI and the management pursuant to the application filed u/s 11(3) of the Act has also filed photocopy of the same before the Tribunal. Hence it is held that a collective dispute of the large number of members in employment of the management have raised this dispute which is covered u/s 2(K) of the ID Act. Furthermore the documents filed by the claimants nowhere reveals that the issue of espousal was ever raised by the management during conciliation proceeding. Hence it is held that the proceeding is maintainable and cannot be held as illegal or non maintainable for want of espousal.

The other argument of the management is with regard to the maintainability of the proceeding being hit by the Principles of res judicata. The Ld. A/R for the management argued that the claimants who were the casual workers had filed several writ petitions before the Hon'ble High Court of Delhi claiming regularization of their service against permanent vacancies. The Hon'ble High Court passed orders in WPC No. 2644 of 1997 by judgment dated 21.08.1988. Not only that the Hon'ble High Court also passed an order in WPC No. 4113 of 1994 by judgment dated 09.05.1997 rejecting the prayer for regularization and the management is adhering to the directions of the Hon'ble High Court and engaging casual daily rated workers from the select panel according to their seniority. The judgment of the Hon'ble High Court of Delhi was challenge before the Hon'ble Supreme Court where the judgment of the Hon'ble High Court has been confirmed. In reply the Ld. A/R for the claimants submitted that those writs were for the regularization of the service of the casual workers given the temporary status against permanent vacancy. But the claim and prayer made in the present proceeding is totally different from the prayer made in those writ petitions. Here the claimants are disputing the benefits granted to them as temporary workers and have advanced a claim for the deficiency of the benefits granted by the management. The issue involving the present proceeding since was never considered by the Hon'ble High Court in the said writ petitions, the present proceeding is not hit by the principles of res judicata.

Under the principles of res judicata no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same party or litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, heard and finally decided by such court. Here as stated by the management some writs were filed and disposed of by the Hon'ble High Court relating to the claim of the workmen for their regularization against permanent vacancy. But this proceeding is with regard to the grievance of the claimants for non extension of the benefits granted to the casual workers and conferment of temporary status. Hence, it cannot be held that filing and disposal of the above mentioned writ petition by the Hon'ble High Court shall not act as res judicata for the present proceeding.

Before analyzing the evidence on record it is necessary to observe that during the pendency of this proceeding the claimants had filed an application u/s 11(3) of the Id Act praying a direction to the management for production of documents. Those documents were called for in view of the objection taken by the management in its written statement. The application was made for production of list of the empanelled casual employees in year 1990, details of the casual employees engaged from out of the said list, the recruitment and promotions Rules and policy of the management for daily rated casual workers and casual workers, and the policy of the management on wages of those workers, overtime record, since 1997 onwards and payment made thereon, records pertaining to payment of bonus to daily rated casual workers, causal workers and temporary workers. Prayer was also made for production of documents pertaining to contribution of EPF to fixed term contractual labours leave rules and the list of the workmen in the selected panel of 1990. The management did not produce the documents on the plea that all the documents called for are not relevant. It only filed few documents like the empanelment list of causal workers of 1990 etc. Thus, this tribunal by order dated 08th December 2014 and 28th January 2015 directed the management to file the documents mentioned in the application filed by the claimant's u/s 11(3) of the ID Act in alternate giving liberty to the claimants for filing secondary evidence. Accordingly the claimants have adduced secondary evidence of the documents.

During the hearing the secretary of the union representing the workmen testified as WW1 and filed several documents which have been marked in a series of exhibit WW1/1 to exhibit WW1/22. He was cross examined at length by the management. Similarly on behalf of the management the General Manager of the management company testified as MW1. She has also filed certain documents marked as MW1/1 to MW1/6. This witness was also cross examined on behalf of the claimants.

FINDING

ISSUE No.1

This issue involves all the 5 claim advanced by the claimants and referred by the Appropriate Government. The claimants are disputing the benefits granted to them after conferment of the temporary status. They have stated that all the members of the Union contesting this claim are working for the management continuously for more than 17 years without any break. But they are still being treated as causal employees. Though, the DOPT, Government of India by the office memorandum dated 10th September 1993 issued guidelines for grant of temporary status to all the causal employees employed in the Central Government Offices and undertaking who have completed 240 days of work in a calendar year preceding to the date of the said notification and in accordance to the scheme having name "casual labours(grant of temporary status and regulation) scheme of government" the management adopted unfair labour practice by not extending the benefits of temporary status workers to the members of the claimant/union despite they having all the requisites to be treated as such. The claimant has further stated that many of its members retired from service and some died without enjoying the benefit of the scheme. It is the specific stand of the claimant/union that as per the scheme the workers who have worked for 240 days preceding to the date when the scheme came into force are to be treated as temporary status workers which is nothing but a step forward for their regularization against permanent vacancies depending upon fulfillment of other conditions. On conferment of temporary status the workers are entitled to all the benefits granted to the counterpart regular employees. The management, a Government of India undertaking being fully aware of the said legal position dealt the members of the claimant union in a discriminatory manner. The witness examined on behalf of the claimant by filing several documents and in his oral testimony stated that 325 casual workers including 195 casual workers of the select panel of 1990 are working with the management without any break. These persons include loaders, helpers, peons, drivers, typist, and safaiwala etc. in different department of the management. Copy of the appointment letter of few of such employees have been filed and exhibited by the claimant. Initially they were engaged as casual workers. When the notification dated 10th September 1993 came into force all these casual workers who met the eligibility were treated as temporary workers and some of the benefits were allowed to them. But the management in contravention of the guideline set out in the OM No. 51016/2/90-Estt. Government of India DOPT dated 10th September 1993 with drew all the benefits earlier granted to the casual workers. There started the dispute between the union and the management. In this claim petition the claimants/union have, stated that the casual workers after conferment of temporary status are entitled to overtime dues at double rate since 1997. But the management did not pay the overtime dues in that rate from 1997 to 2006. Hence, the member of the claimant union are entitled to the said differential overtime dues from 1997to 2006 with interest. The union has also stated that the members of the union have not been paid bonus for the year 2005-2006. The benefits like paid leaves subscription of Provident Fund has not been allowed to the members. Not only that the benefit of productivity linked incentive has not been paid to the temporary status employees. The witness thus, stated that this discriminatory action of the management amounts to unfair labour practice and the tribunal is empowered to grant the benefits to the members of the union and direct the management to pay the benefits within the time to be fixed by the tribunal with interest.

On behalf of the management all the claims advanced by the union has been denied in toto. The witness examined by the management is the General Manager of the Management Company. In her sworn testimony she

has stated that the members of the claimant union claiming under the reference are casual workers engaged on daily wage basis and they had filed civil writ petition No. 5202 of 2010 before the Hon'ble High Court seeking regularization of their employment. The Hon'ble High Court did not accept the claim of the claimant union for equal benefit as regular employee and the said judgment of the High Court has been confirmed by the Hon'ble Supreme Court. Before that two separate writs i.e. WPC No. 4113 of 1994 and WPC 2644 of 1998 were filed and pursuant to the orders passed in the said writ petitions by the Hon'ble High Court the members of the claimants union are continuing in service. Such continued engagement does not change the status of the claimants as casual daily rated workers and cannot claim the benefit of temporary status. But during cross examination she admitted that these claimants are working continuously for the management since 25 years without break and they are being paid some of the benefits at par with the regular employees. In the WS filed by the management it has been clearly admitted that the persons who were empanelled in the year 1990 by the erstwhile Indian Airlines are the Daily rated casual workers and not the casual workers as claimed by the workmen Union. The information sought under RTI about the list of such workers has been provided and marked as exhibitWW1/6. In this information the details of the casual workers engaged from the panel formed for appointment to regular post was provided to the Union. The list of the workers so empanelled under different category matches the list of the members of the union filed alongwith the claim petition. Thus, the stand taken by the management that the members of the claimant union are casual workers and the panel was prepared for the daily rated casual workers appears to be wrong. Moreover under the standing order of the management there is no distinction between the casual workers and daily rated casual workers.

Now it is to be seen if the members of the claimant union who were recognized as the temporary status workers are entitled to the benefit claimed by them. In this regard the office memorandum of 10th September 1993 issued by the DOPT is material. In this memorandum and the scheme framed there under it has been clearly indicated that all the casual employees employed in the Central Government offices and have rendered 1 year of continuous service shall be granted temporary status. Under the scheme it has been clearly indicated what benefits shall be allowed to them with the provision that the previous benefit granted shall not be withdrawn. The benefits granted under the scheme of 1993 include wage at daily rates with reference to the minimum of the pay scale for a corresponding regular employee, benefits of increment at the same rate as applicable to group-D, leave entitlement, which will be on pro-rata basis at the rate of one day for every 10 working days. 50% of the service rendered under the temporary status would be counted for retirement benefit etc. On behalf of the claimants another office memorandum of DOPT dated 06th June 2002 has been filed which is in continuation of the office memorandum dated 10th September 1993. In this office memorandum it has been clarified that temporary status would be conferred on all casual employees who are in employment on the date of issue of the OM dated 10.09.1993 and have rendered continuous service for a period of at least 240 days in a calendar year. On behalf of the claimant another document has been filed and marked as WW1/11 which is the office memorandum of DOPT dated 17th February 2009 wherein recommendation was made for extension of the pay scale granted by 06th Central Pay Commission to all casual workers conferred with temporary status. Thus, from the oral and documentary evidence adduced it is evidently clear that the members of the claimant union were initially appointed as casual workers and later granted temporary status pursuant to the office memorandum dated 10th September 1993 issued by the DOPT. But the management has failed to explain as to why all the benefits of temporary status have not been paid to the said employees since the year 1997. Similarly the management has deliberately drawn a line between casual workers and daily rated casual workers in the pleadings and evidence though it has miserably failed to produce company policy and standing orders showing them as 2 different and distinct categories of workmen. In the WS the management has admitted about payment of overtime to the members of the claimant union since 1996 at single rate and payment of the same at the double rate since September 2006. No document has been placed on record by the management to substantiate that the members of the claimant union are not entitled to overtime wage at double rate for the period 1997 to 2006, when the claimant has proved that the regular employees are getting the overtime dues at the double rate for the said period. Similarly the management has stated that payment of bonus is always linked with the profit and loss of the company, and the workers cannot claim the same as a matter of right. The claimants have placed evidence to prove the arbitrariness of the management in payment of bonus putting an illegal ceiling to the same. The management though claims heavy loss suffered in the year 2006, the evidence placed by the claimants proves that the bonus was paid for the financial year 2005 and 2006 to other employees and even to the outsourced employees. Hence, nonpayment of bonus to the member of claimant union for the period 2005-2006 is illegal and amounts to denial of the benefit granted under the scheme of 1993.

To rebut the stand of the claimant union that they are entitled to be covered under the EPF Scheme the management in its pleading has stated that the said Act is not applicable to the management since it has its own trust fund. It has also been pleaded that applicability of the EPF Act cannot be decided in this proceeding. With regard to the productivity linked incentives from the date of the actual employment the management has stated that the same is a policy decision and cannot be claimed as a matter of right.

On behalf of the claimants some documents have been filed from which it is seen that the claimant union had approached different authorities requesting PF coverage to them. A document has been placed on

record which is a correspondence between the additional CPFC to the CPFC, EPFO seeking direction on the complaint received from the Union with regard to the coverage. No other document has been placed on record by the claimant Union on any decision taken in this regard. Admittedly the management has its own Provident Fund Trust. The claimant has not filed any document to prove that the temporary status casual workers are entitled to be covered under the said scheme. Whether or not establishment/employee shall be covered under the EPF and MP Act is the domain of the EPFO and applicability of the same to a particular person or group of persons cannot be decided in this proceeding. There is also no evidence placed on record by the claimants that the productivity linked, incentives are also payable to the casual workers conferred with the temporary status. However, the memorandum of 2010clearly says that the persons acquiring temporary status on completion of 240 days work in a calendar year are entitled to wage and leave at par with the counterpart regular employees and the said leave entitlement will be on pro rata basis at the rate of 1 day for every 10 days of work.

Hence, on a careful analysis of the evidence on record it is held that the claimants are entitled to arrears of the overtime wage since 1997 to 2006 at double the rate. They are also entitled to the bonus for the financial year 2005-2006 at the rate paid to the counterpart regular employees. They are also held entitled to all other benefits of temporary status employees mentioned in the office memorandum dated 10th September 1993. Besides that the members of the claimant union are also held entitled to paid leave on pro rata basis as indicated in the preceding paragraph. All these financial benefits shall be paid to the members of the claimant union alongwith the arrear and interest on the accrued amount shall be paid at the rate of 06% per annum from the date of accrual and till the final payment is made. But the claimants are held not entitled to the claim of productivity linked incentives and coverage under the EPF scheme since the same cannot be decided in this proceeding.

ISSUE NO.2

In view of the finding arrived in issue No.1 the claimants are not entitled to any other benefit then indicated above. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant union. The members of the claimant union who have completed 240 days of work in a calendar year in the establishment of the management are held entitled to temporary status and all the benefits applicable to the said employees as per the OM of DOPT dated 10th September, 1993. The members of the claimant union conferred with the temporary status as stated above are held entitled to arrear of the overtime dues at double the rate from 1997 to 2006. The said members are also held entitled to the bonus with interest for the financial year 2005-2006 at par with the bonus paid to the counterpart in regular cadre. The said temporary status employees are also held entitled to paid leave at pro rata rate at the rate of 1 day for every ten working days from the date of conferment of temporary status and the benefits thereto. It is further directed that the management shall take steps for calculation of the dues payable and settle the same in respect of the eligible individual member of the claimant union within 3 months from the date of publication of this award. The said accrued amount shall be paid to the beneficiaries alongwith interest at the rate of 6% per annum from the date of accrual till the payment is made. If the management would fail to pay the dues within the time stipulated under this award the amount shall carry interest @ 09% from the date of accrual till the date of actual payment. Consign the record as per Rule. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स जेट एयरवेज (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–2 चंडीगढ़ के पंचाट (संदर्भ संख्याः 20/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-11012/22/2014-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 677.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.2, Chandigarh (Ref. No. 20 of 2014) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Jet Airways (India) Ltd., and their workmen which was received by the Central Government on 24.09.2021.

[No. L-11012/22/2014-IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No.20/2014
Registered on:-12.08.2014

1. Hamid Ali son of Shokat Ali.
2. Bunty son of Guddo
3. Brij Lal son of Sita Ram
4. Bachan Lal son of Karlar
5. Sat Dev Sambyal son of Sawaran Singh
6. Rakesh Kumar son of Thoru Ram
7. Kimti Lal son of Kartar Chand

All C/o Shri L.R. Singh, Organising Secretary,
Bhartiya Mazdoor Sangh Parade (J&K), Jammu. ... Workmen

Versus

1. The Chairman, M/s Jet Airways(India) Ltd., S.M. Centre, Mumbai-400059.
2. Vic Chairman, Jet Airways, I.T.I. Airways, T-New Delhi.
3. The General Manager, M/s Jet Airways, G.M. Office, New Delhi.
4. Station Master, M/s Jet Airways, Satwari Airport, Jammu Cantt. Jammu.
5. Managing Director, M/s Golden Sunshine Tours and Travels, Private Limited. Dhanjibho Building, Sherwani Road, The Bund Srinagar, Kashmir.
6. Sh. Ajay Gupta, M/s. Trikuta Traveler Planner,
   Nanak Nagar, Jammu ... Respondents/Managements

AWARD
Passed on:-02.08.2021

Central Government vide Notification No. L-11012/22/2014-IR(CM-I) Dated 23.07.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of M/s Jet Airways, Jammu Airport, Satwari Cantt. Jammu(J&K) in terminating the services of Shri Hamid Ali & 6 others workmen (as per enclosed list) w.e.f. 01.10.2013 without paying statutory dues is legal & justified? To what relief the workmen are entitled to and from which date?"**

1. Both the parties were put to notice and claimants/workmen filed their claim statement with the averment that they had joined the respondents during the period from 7 to 18 years back and had been working continuously, uninterruptedly and regularly on the monthly wages paid by the employer as mentioned in Annexure-A, They were illegally terminated by the respondent w.e.f. 01.10.2013 which was challenged by way of demand notice dated 30.10.2013 that they were performing their duties and working in the establishment named M/s Jet Airways Satwari Airport, Jammu Cantt through the Labour Supplied Contract Agreement with the principal employer. The work of the workmen was supervised and controlled only by the officials of the principal-employer and not by the contractor who used to come on last day of the month to disburse their wages. The particulars of the workmen are as under:-

S. No.	Name	Date of Joining	Total Service	Termination	Wages
1.	Hamid Ali	2001	13 years	01.10.2013	7100/-
2.	Banty	1998	16 years	01.10.2013	7500/-
3.	Brij Lal	2007	7 years	01.10.2013	6400/-
4.	Bachan Singh	2003	11 years	01.10.2013	8300/-
5.	Sat Dev	1998	16 years	01.10.2013	8200/-
6.	Rakesh Kumar	1996	18 years	01.10.2013	8843/-
11.		1996	18 years	01.10.2013	8843/-

2. The principal-employer always had given instructions to the workmen working as a loaders and guards. The workmen were working under the control and supervision of the principal-employer who has full economic control also. The principal-employer engaged loaders through labour supplier contract agreement with M/s Golden Sunshine Tour and Travelers(Pvt.) Ltd. for performing the perennial type of job by all the workmen and discharge other works also incidental to the main work for the principal-employer and their duties were under direct control and supervision of the principal-employer. The contract entered between the principal-employer and labour contractor is sham and camouflage. The duties discharge by the loaders being essential for JET Air Ways at Satwari Port Jammu. There was only paper arrangement between the labour supplier and principal-employer. All the workmen remained in the employment upto 30.09.2013 continuously and regularly but services of the workmen were terminated on 01.10.2013 wrongly and illegally with the hire and fire policy when the new labour supplier namely Sh. Ajay Implies M/s Trikuta Travelers Planner Nanak Nagar, Jammu engaged by the principal-employer through new agreement to supply labour. Prior to termination of the services of the workmen, the respondent issued them neither charge-sheet, notice nor paid any compensation to the workmen. The respondent retained the junior in the service and recruited the fresh in place of the workmen. All the workmen are entitled to be reinstated in the service with the continuity of service and with full back wages of the intervening period. Therefore, it is prayed that the workmen be granted the relief of reinstatement in service with continuity of service and with full back wages of the intervening period in the interest of justice.

3. Respondent no.1 i.e. The Chairman, M/s Jet Airways(India) Ltd., S.M. Centre, Mumbai, has filed its written statement, alleging therein that since the present reference has not been made against the correct legal entity and has rather been made against an entity which has never been in existence. For the sake of argument, if an award is passed in favour of the claimants and against theanswering-respondent, the same would not be in a position to get implemented and enforced as there is no such entity in existence which would be an exercise in futility. The above terms of reference has been made without taking into consideration the facts of the issue and application of mind and even without considering the submissions and facts. It is denied that the company engaged the claimants through labour supplier, contract labour agreement as alleged. To clarify the correct factual position the claimants were deployed by their employer M/s Golden Sunshine Tours & Travels Pvt. Ltd. for providing certain services under and arrangement/agreement entered with the company and not otherwise which are duly permitted in law and are in accordance with the Contract Labour(Regulation & Abolition) Act, 1970 and the registration and licence certificates were duly obtained from the competent authorities. It is vehemently denied that the contract entered between the company and the contractor/outsourced agency was sham or camouflage or there was only a paper arrangement as vaguly alleged by the claimants. It is not denied that the arrangement with M/s Golden Sunshine Tours & Travels Pvt. Ltd. has come to an end and the contract with M/s Trikuta Travelers have also been terminated. At present a new agency namely M/s Aroon Aviation is providing services to Jet Airways India Ltd. These contractors have been rendering services to the company under an arrangement duly entered in accordance with law. Since the claimants were never employed by the company the question of issuing any charge-sheet, notice, enquiry or paying any compensation as vaguly alleged did not arise. In view of the submissions made, the claim filed by the claimants being factually incorrect and in fact abuse of process of law may kindly be rejected.

4. Respondent Nos.2 to 6 has not filed any written statement to the claim statement filed by the workmen hence, proceeded ex parte.

5. In support of their claim statement, one of the workmen Hamid Ali has filed its affidavit in evidence as Ex.WW1/A on behalf of all workmen along with documents Annexure-A and Annexure-B. Thus, affidavit tendered by the one of workmen Hamid Ali and facts alleged in the affidavit remains uncontroverted and unrebutted.

6. I have heard Sh. M.R. Dhiman, AR for workmen in the absence of respondent nos.1 to 6 and perused the written argument submitted by the learned AR of workmen.

7. The issue as to whether the workmen were engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimants were in the employment of management is always on the workmen/claimants and it is for the workmen to adduce evidence to prove factum of their employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that they have worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

8. Question remains to be seen whether these workmen have proved that they were directly engaged by the respondent-management as mentioned in the claim petition and regularly continued till their termination on 01.10.2013. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workmen/claimants were directly employed by the respondent-management. The list submitted by the claimants in the form of Annexure-B along with affidavit is of no use as it is not signed by anyone nor proved by the witness Hamid Ali in the service.

9. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

(1) Whether the principal employer pays the salary instead of contractor and

(2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workmen. In fact, claim petition is totally silent regarding the initial payment of wages, salary, letter of appointment or anything likewise. Similarly, one of the workmen namely Hamid Ali has not mentioned anything regarding the mode of payment of wages, salaries etc. in the affidavit. Thus, this basic feature for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the one of the workmen namely Hamid Ali. In this connection, learned AR for the workmen has contended that payment of salary was subject to the control and supervision of the management and virtually it was paid by the management as is alleged by the witness Hamid Ali in his affidavit. I am not satisfied with the arguments of the learned AR of the workmen as nothing is mentioned in pleading/claim petition as well as affidavit submitted by the one of workmen namely Hamid Ali in support of the claim petitions with respect to manner and mode of appointment, initial wages/salaries and mode of its payment by principal-employer. It is also pertinent to mention that nothing is on record in the form of documentary evidence that these workmen were directly paid by the management. It is surprising that this witness has not specifically stated in his affidavit about the amount of salary or wages payable to him either by the management or by the contractor. Thus, on this issue, firstly, it can be incurred that there is nothing on record to prove the factum of direct payment of salary by the management.

10. Secondly, so far as, the question of controls and supervision is concerned. Witness examined by the workmen has categorically stated that their works were supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimants. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker***

works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

11. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimants are mum on this score and witness examined by the claimants have not mentioned any specific averments in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grants their leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasised to control the work of the management for a specific work in efficient manner done by the management in the establishment.

12. Undoubtedly, in Tribunal, cases has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. It is true that case is proceeded ex parte against all the respondents and affidavit filed by the one of workmen namely Hamid Ali is uncontroverted being not cross-examined by the respondents. But on the basis of the affidavit, legally it cannot be inferred that workmen were directly employed by the respondents as alleged in the claim petition especially in the circumstances mentioned in the claim petition. It is pertinent to mention that neither the date of joining nor the month has been mentioned in the claim petition with respect to the claimants. It is also relevant to observe that workmen have not mentioned the term and condition of the joining, wages payable to them at the time of their joining. As per the facts alleged in the claim petition, there was a contract entered into by the contractor M/s Golden Sunshine Tour and Travelers(Pvt.) Ltd. with the principal-employer but the agreement was sham and camouflage. As per the petition and affidavit filed by the one of workmen Hamid Ali that there was a contract entered between the principal employer with the labour supplier and contractor visit to the premises of the Jet Airways on the last day of the month for the distribution of the wages. This fact in claim petition as well as affidavit itself denotes that it was the contractor through whom the payment was made by the Jet Airways. Thus, mere alleging that the agreement with the contractor M/s Golden Sunshine Tour and Travelers(Pvt.) Ltd. is sham and camouflage without any cogent and reliable evidence is not acceptable in the eye of Law.

13. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that respondent-management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned AR of the workmen contended that workmen are rendering their services with the management for so many years and they had completed 240 days in the year 2013 before termination by the respondent-management. As per pleading of the workmen they were terminated from 01.10.2013 without compliance of Section 25-F, 25-G and 25-H of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workmen were retrenched/terminated by the respondent-management in corresponding year 2013 even they had rendered 240 days of service in the respondent-management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit filed by the one of workmen Hamid Ali, it is alleged in general that they have served 240 days in the respondent-management. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the one of workmen namely Hamid Ali is not very specific with respect to 240 days working in the respondent-management. Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani, (2002)3 SCC 25,*** has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then mere non-production of the muster roll for a particular period is not sufficient for the Labour Court to hold that workmen had worked for 240 days as claimed. Thus, as per the Hon'ble Supreme Court in order to prove the working of 240 days, receipt of salary or wages as the case may be are relevant for the consideration by the Tribunal. Learned AR of the workmen contended that all these documents are with the management and they have not submitted before this Tribunal.

Learned AR of the workmen further contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the AR of the workmen. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that they had worked for 240 days in preceding 12 months prior to their alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act. An order retrenching a workman could not be effective unless the condition precedent therefore satisfied. From the perusal of the file, it appears that the workmen has not adduced any reliable evidence whatsoever in support of their contention that they have completed 240 days continuously before alleged termination/retrenchment and complied with the requirement of Section 25-B of the Industrial Disputes Act, 1947.

14. Undoubtedly, workmen has alleged in their claim petition that management has violated the provisions of Section 25-G and 25-H of the ID Act, 1947 but nothing is placed on record as evidence to substantiate engagement of other workers after the alleged termination as such, it does not require to be considered in detail. Furthermore, the relationship of employer and employee and master and servant between the parties could not be proved satisfactorily hence retrenchment by the respondent-management and violation of Section 25-F, 25-G and 25-H have become meaningless in the absence of any cogent evidence.

15. Conclusively, it may be observed that these workmen were rendering their services under the contractor M/s Golden Sunshine Tour and Travelers(Pvt.) Ltd. during the relevant period from the year mentioned in the claim petition as the case may be. Moreover, legally initial burden lies with the workmen to prove that they were directly engaged and working under M/s Jet Airways from the date of their alleged joining in the claim petition till their alleged termination/retrenchment without complying the provisions of ID Act which they have failed to prove on the basis of cogent evidence. Hence, in my considered opinion, it is not possible to hold that they were illegally and in unfair manner have been terminated by respondent-management from 01.10.2013. As such, these workmen are not liable for any relief from this Tribunal and the reference is answered accordingly.

16. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2021

का.आ. 678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इंडिया चार्टर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, मुंबई के पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.2021 को प्राप्त हुआ था।

[सं. एल-20013/02/2021-आईआर (सीएम-1)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 29th September, 2021

S.O. 678.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai (Ref. No. 12 of 2015) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Charter Ltd., and their workmen which was received by the Central Government on 24.09.2021.

[No. L-20013/02/2021-IR (CM-1)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present : JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO.CGIT-1/12 OF 2015

Parties: Employers in relation to the management of Air India Charter Ltd.

AND

Their workmen

Appearances:

For the first party management : Mr. Lancy D`Souza, Adv

For the second party / Union : Absent

State : Maharashtra

Mumbai, dated the 23rd day of July 2021

AWARD

1. The present reference has been made by the Central Government by its order dated 16.12.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

(i) Whether Airline Attendants appointed on Fixed Term Contract Basis are entitled for minimum 60 flying hours in a Month? (ii) Whether action of Management of M/s.AICL in effecting career progression of Airline Attendants Incharge (AAIC) by linking it with change of base is in violation of their won notice issued under Ref. No. AICL/AA/1805/250 dated 16.03.2011? (iii) Whether Airline Attendants appointed on Fixed Term Contract Basis are eligible for HRA, Fixed D.A. in line with regular employees of M/s.AICL? (iv) To what extent the demands of such Airline Attendants appointed on Fixed Term Contract Basis who have acquired 6 years plus experience for flying facilities in Boeing 737-800, 777 and 787 is justified? (v) Whether the case of Airline Attendants appointed on Fixed Term Contract Basis initially for 5 years and after its renewal for 3 years service, is fit to be regularized on permanent roll of M/s.AICL? (vi) How far the demand of the Union for payment of Bonus against accounting year 2010-11, 2011-12, 2012-13 & 2013-14 is legal and justified? To what relief the workman are entitled to?

2. Perusal of the record reveals that Dasti Notice was served on the second party Union. Mr; Lalit Kumar Rathi, stating himself to be Executive Member of the second party Union was present for the second party Union on 30.06.2016 and the case was adjourned to 9.11.2016.

3. When the matter was taken up for hearing on 09.11.2016 none was present on behalf of the second party Union and since then no representative of the second party Union is present till date on the date of hearing. On 17.12.2020, this Tribunal directed that the proceedings be held ex parte.

4. Today, i.e. on 23.7.2021, when the matter was taken up for hearing, Mr.LancyD`Souza, Adv is present on behalf of the first party management and none is present on behalf of the second party Union.

5. No Statement of Claim has been filed on behalf of the second party / Union.

6. From the above narration of facts, it is evident that despite service of notice and despite repeated dates having been fixed, none has appeared on behalf of the second party Union. No Statement of Claim has been filed on behalf of the second party Union. There is thus, no pleading or evidence filed on behalf of the second party Union in support of its claim as contained in the Reference made to this Tribunal. No relief, therefore, can be granted to the second party Union.

7. Reference is consequently answered by stating that no relief can be granted to the second party / Union.

8. Award is passed accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 679.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एवं सिन्ध बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण–सह–श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 58/2006) प्रकाशित करती है।

[सं. एल-12012/35/2006-आईआर (बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 679.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur shown in the Annexure, in the industrial dispute between the management of Punjab & Sindh Bank and their workmen.

[No. L-12012/35/2006-IR (B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

PRESENT : SOMA SHEKHAR JENA, HJS (Retd.)

I.D. No. 58/2006

Ref. No. L-12012/35/2006-IR(B-II) dated: 30.08.2006

BETWEEN :

Shri Keshav Prasad S/o Late Shri Raja Ram
86/153, Raipurwa, Kanpur (UP).

AND

The Chief Manager
Punjab and Sindh Bank
Gumti No. 5, Kanpur (UP)

AWARD

1. By order No. L-12012/35/2006-IR(B-II) dated: 30.08.2006the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute for adjudication to this CGIT-cum-Labour Court, Kanpur.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF PUNJAB & SIND BANK IN TERMINATING THE SERVICES OF SHRI KESHAV PRASAD, PEON W.E.F. 20.04.2002 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED TO?"

3. The case of the workman, Keshav Prasad, in brief, is that he was appointed on the post of Peon on 26.02.1989 in Latooche Road branch of the Bank and was transferred to Gumti No. 4 branch, Kanpur. The workman has submitted that his appointment and transfer were made as per orders of the officers and he worked continuously for 13 years for more than 240 days every year; however, he was not paid salary equal to permanent workers rather he was paid very less salary. The workman has alleged that his services have been terminated on 20.04.2002 without any notice/notice pay, charge sheet/enquiry or any retrenchment compensation or assigning any reason in violation to the provisions contained in Sections 25 F of the Industrial Disputes Act; and accordingly, has prayed that his termination be declared illegal and he be reinstated with consequential benefits including full back wages.

4. The management of the Punjab & Sindh Bank has filed its written statement; wherein it has denied the claim of the workman and has submitted that the workman had never been appointed by the Bank in any capacity; nor did he under go any recruitment process, prescribed for the sub-staff in the Bank, as such, there was no termination of his services at any point of time as there was no relationship of employee and employer between the workman and the Bank at any point of time. The management has submitted that the Branch Manager has no authority to appoint any one in any capacity nor the workman worked with the Bank for time

period claimed by him, therefore, there arises no question of violation of any of the provisions of the I.D. Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman did not file any rejoinder; however, he filed some photocopy and certain original documents in support of its case. On the contrary the management of the bank has not filed any document. The parties adduced their oral evidence apart from submitting their respective submissions in support of their pleadings.

6. Perused entire evidence on record. This is a case which can be properly disposed of by appreciation of the pleadings filed by the parties and the evidence adduced before this Tribunal.

7. The learned authorized representative of the workman has submitted that the workman had been appointed on the post of Peon on 26.02.1989 and he worked continuously for 13 years for more than 240 days. It has been submitted that the management did not pay salary equal to permanent workers to the workman; on the contrary he was paid very less salary. It has been vehemently contended that the services of the workman had been terminated on 20.04.2002 without any notice or any retrenchment compensation in violation to the provisions contained in Sections 25 F of the Industrial Disputes Act.

8. In rebuttal, the learned counsel of the bank has argued that the workman had never been appointed in any capacity with the bank; hence there was no relationship of employer and employee between the bank and the workman, therefore, there arose no question of violation of any statutory provision or illegal retrenchment of the workman at any point of time. Moreover, he submitted that the services of the workman had been availed by the management of the bank on casual basis, intermittently; but the workman never worked for the duration he claims and he is not entitled for any benefits within the purview of the Act. The learned counsel has relied upon:

(i) *2009 (123) FLR 626 Dena Bank, Mumbai vs Ashraf Yunus Shaikh.*

(ii) *2010 (124) FLR 305 Central Bank of India vs Mr. Sanjay E. Dolaskar, Ahmed Nagar.*

(iii) *2010 LLR 854 New India Assurance Co. Ltd. Vs Narendra Kumar*

(iv) *2007 (113) FLR 861 Prakash Chandra Gautam& others vs Regional Manager, Central Bank of India, Agra & another.*

(v) *2002 (95) FLR 1137 President, Perookada Service Co-operative Bank Ltd. Vs Smt. Sheena & others.*

(vi) *2011 LLR 516 State of UP vs Presiding Officer, Labour Court (I) UP, Kanpur & another.*

(vii) *2011 (129) FLR 390 PurvanchalVidyutVitran Nigam Ltd, Varanasi & another vs. State of UP and others.*

(viii) *1999 (81) 319 State of UP vs Labour Court, Haldwani& others.*

(ix) *2009 LLR 966 Jagbir Singh vs Haryana Sate Agriculture Marketing Board &anr.*

(x) *2010 LLR 677 Senior Superintendent Telegraph (Traffic) Bhopal vs Santosh Kumar Seal &ors.*

(xi) *2007 (112) FLR 474 Indian Drugs & Pharmaceuticals Ltd. Vs Workman, Indian Drugs & Pharmaceuticals Ltd.*

(xii) *1997 (76) FLR 237 Himashu Kumar Vidyarthi& others vs. State of Bihar & others.*

(xiii) *2006 (109) FLR 194 M.P. Housing Board vs. Manoj Srivastava.*

(xiv) *2011 LLR 337 Union of India vs VartakLabour Union.*

(xv) *2006 (109) FLR 826 Secretary, State of Karnataka & others vs. Uma Devi & others.*

(xvi) *2006 (109) FLR 204 Branch Manager, MP State Agro Industrial Development Corporation Ltd. & another vs. S.C. Pandey.*

(xvii) *2013 (136) FLR 908 Asstt. Engineer Rajasthan Dev. Corp. & another vs. Gitam Singh.*

(xviii) *2013 (136) FLR 898 Raj Kumar vs. Jalgaon Municipal Corporation.*

9. I have given my thoughtful consideration to the rival pleadings and submissionsof the parties and scanned entire evidence on record.

10. It is the case of the workman that he was appointed as Peon by the opposite party; but was not given any appointment letter; and he worked with the opposite party continuously for the period 26.02.1989 to 20.04.2002; however, his services were terminated orally w.e.f. 20.04.2002without any notice or notice pay in lieu thereof in contravention of the provisions contained in the section 25 F of the I.D. Act, 1947 in spite of the

fact that he worked for more than 240 days in a calendar year. The workman has original copy working certificate in support of his claim of his working with the bank.

11. Per contra, the single pointed case of the management is that the workman was never selected nor appointed by the bank and there was no relationship of employee and employer between the workman and the Bank; therefore, there arose no question of terminating his services or violation of any of the provision of the Act. There is no documentary evidence that the claimant workman was given employment after undergoing some regular selection process as per the rules followed in nationalized banks. However, it has been submitted that the services of the workman had been availed by the bank intermittently on casual basis and he was paid accordingly on daily rates; hence there was no contravention to any of the provisions of the Act.

12. It is settled law that when the workman comes forward with the case that his services have been terminated without following previsions of the section 25 F of the Act, then burden of proof heavily lies upon him to prove that he had worked for 240 days in the preceding twelve months from the alleged date of his termination.

The workman in his oral evidence on oath has stated that he worked w.e.f. 26.02.1989 and he was terminated on 20.04.2002. He has also stated that initially he was paid @ Rs. 25/- per day and later on he was paid @ Rs. 65/-. The management has not filed any documents; on the contrary when the workman filed application to summon the management filed an affidavit dated 19.02.2008; wherein at para 04 of the affidavit, it has been stated that the workman was paid wages for the period he worked with the bank from time to time but has not filed any payment voucher in support of its submissions. The workman has filed a working certificate under signature of the Chief Manager showing that he worked with the Bank as temporary peon w.e.f. 26.02.1990 to 31.12.2001(Paper no. 08/18 and 08/19).

13. The management has clung to usual duties to rebut the case of the workman with evidence that the workman had worked with it on casual basis as and when required for limited span of time through payment vouchers. Therefore, relying upon the documentary evidence filed by the workman, there is ample evidence to record this finding that the workman had actually worked for more than 240 days in preceding twelve months prior to the date of his alleged termination i.e. 20.04.2002; and oral termination of his services. Though the termination was without any notice or notice pay in lieu thereof the termination cannot be equated with retrenchment with utter violation of the section 25 F of the I.D. Act, thus, the termination of the services of the workman was neither illegal nor unjustifiable.

14. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. The case law [2007 (113) FLR 861] between Prakash Chandra Gautam and others and Regional Manager will govern the reference. Admittedly, the services of the workman were terminated orally on 20.04.2002.

15. In *Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309* Hon'ble Apex Court has observed as under:

> ***"However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.***
>
> ***The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."***

16. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would be met by paying compensation to the workman instead in place of relief of reinstatement in service.

17. Having regards to these facts that the workman has worked as daily wager for approximately 13 years i.e. from and he was getting Rs. 65/- per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump

sum amount of compensation only. In view of the spirit of case law [1997(76) FLR 237] Supreme Court Himanshu Kumar Vidyarthi v/s State of Bihar, termination of a daily wager cannot be treated as retrenchment.

18. The management is directed to pay a sum of Rs 2,00,000/- Rupees Two Lakhs only) to the workman as compensation for termination of his services. The said amount shall be deposited into the bank account of the workman within 08 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

19. The reference under adjudication is answered accordingly. Parties are left to bear their respective costs.

Kanpur.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 680.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगाव पोर्ट ट्रस्ट के प्रबंधतंत्र, संबद्ध नियोजकां और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 15/2017) को प्रकाशित करती है।

[सं. एल-32025/01/2017-आईआर (बी-II)]
राजेन्द्र सिंह, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 680.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust and their workmen.

[No. L-32025/01/2017-IR (B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :S. S. GARG, Presiding Officer

REFERENCE NO.CGIT-2/15 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MORMUGAO PORT TRUST

The Chairman,
Mormugao Port Trust,
Headland Sada, Vasco
Goa- 403 804

AND

THEIR WORKMEN

The General Secretary,
Goa Port and Dock Employee's Union,
MPT Administrative Building,
Adjacement to Canteen, Headland, Sada, Vasco,
Goa- 403 804

APPEARANCES:

FOR THE EMPLOYER : Mr. Geeta Raju, i/b M/s. M.V.Kini & Co. Advocate

FOR THE WORKMEN : Mr. J. H. Sawant Advocate

CAMP GOA, dated the 01 September, 2021

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-32025/01/2017 – IR (B-II) dated 26.04.2017. The terms of reference given in the schedule are as follows :

''Whether the action of the management of MPT Vasco, Goa in denying the legitimate promotion to Smt. Nilima R. Swar as Hindi Officer ignoring the prevailing recruitment rules is justified, legal and proper? If not, to what relief, Smit. Nilima R. Swar is entitled do?''

2. After the receipt of the reference, both the parties were served with the notices. Matter was fixed for cross examination of ww-1.

3. Today second party Union filed application Ex-18 stating that Worker is not interested in pursuing the Claim. Therefore they prayed that the reference is to be disposed off as withdraw. Accordingly I pass the following order.

ORDER

Reference is disposed of as withdrawn.

SHYAM. S. GARG, Presiding Officer/Link Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 681.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दाईवा एसेट मैनेजमेंट (आई) प्रा. लिमिटेड, मुंबई, (महाराष्ट्र); श्री अकीरा मोरिता, सीईओ, दाइवा एसेट मैनेजमेंट (आई) प्रा. लिमिटेड, मुंबई, (महाराष्ट्र) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री राजेश मिश्रा, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-2 मुंबई के पंचाट (संदर्भ संख्या CGIT-2/2of 2014) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 29.09.2021 को प्राप्त हुआ था।

[सं. एल-42025/07/2021- आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 681.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/ 2 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court -2 Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to The Daiwa Asset Management (I) Pvt. Ltd., Mumbai. (Maharashtra); Shri Akira Morita, CEO, Daiwa Asset Management (I) Pvt. Ltd., Mumbai, (Maharashtra) and Shri Rajesh Mishra, Worker which was received along with soft copy of the award by the Central Government on 29.09.2021.

[No. L-42025/07/2021-IR(DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : S. S. GARG, Presiding Officer

Appln. (Ref) No. CGIT-2/2 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) DIAWA ASSET MANAGEMENT (I) PVT. LTD.

(2) AKIRA MORITA, CEO, DIAWA ASSET MANAGEMENT (I) PVT. LTD.

1. Diawa Asset Management (I) Pvt. Ltd.,
1102, 11th Floor, Tower No.2, Wing A,
1, India Bulls Centre, Jupiter Compound,
841, Senapati Bapat Marg, Elphinstone Road,
Mumbai – 400013.

2. Akira Morita, CEO,
Diawa Asset Management (I) Pvt. Ltd.
1102, 11th Floor, Tower No.2, Wing A,
1, India Bulls Centre, Jupiter Compound,
841, Senapati Bapat Marg, Elphinstone Road,
Mumbai – 400 013.

AND

THEIR WORKMEN

Shri Rajesh Mishra,
Room No.71, Dular Pachu Chawl,
Opposite Rahat Apartment, New Mill Road,
Kurla [W], Mumbai – 400 070.

APPEARANCES:

FOR THE EMPLOYER (1) : Mr. J.V. Mhaske, Advocate

(2) : No Appearance

FOR THE WORKMEN : Mr. Mulchand Chetiwal, Advocate

Mumbai: dated the 08 September, 2021

AWARD

1. This application is filed by the workman Shri Rajesh Mishra under section 2A (2) read with section 10 of Industrial Disputes Act, 1947.

2. After the receipt of the reference, both the parties were served with the notices. Matter was fixed for evidence of management.

3. Today both parties jointly file application enclosing Settlement deed and also filed receipt of D.D. of RBL Bank dated 6.9.21 for Rs.6,00,000/-. Both parties agreed with Settlement deed and agreed that they do not require any further relief.

4. Workman also asserted that he is satisfied with the settlement, no claim or relief is required further i.e. he is finally settled with the company without any future demand.

5. This is application filed by workman Mr. R. Mishra U/s. 2A (2) of I.D. Act so he did not press his original application Ex.1 due to settlement. So application Ex.1 treated to be withdrawn or not pressed.

6. Signatory of both parties are identified by respective advocates. So this case is dismissed as withdrawn or not pressed.

7. Accordingly I pass the following order.

ORDER

Case is dismissed as withdrawn.

SHYAM. S. GARG, Presiding Officer/Link Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 682.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स वाइस प्रेसिडेंट-एचआर, प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.); श्री कांट्रेक्टर, प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामसरोज कुशवाहा, जिला सतना सीमेंट स्टील फाउंड्री खादन, सतना (म.प्र.) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 130/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-29011/14/2017- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 682.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 130/2017) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Vice President-HR, Prism Cement Ltd., Satna (M.P.); Sri Contractor, Prism Cement Ltd., Satna (M.P.) and Shri Ramsaroj Kushwaha, Jila Satna Cement Steel Foundry Khadan, Satna (M.P.) which was received by the Central Government on 30.09.2021.

[No. L-29011/14/2017-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/130/2017

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Ramsaroj Kushwaha,
General Secretary,
Jila Satna Cement Steel Foundry Khadan
Kamgar Union, Sant Nagar, Ghurdang,
Ward No.11, Post Birla Vikas,
District Satna-485005. ... Workman

Versus

The Vice President-HR,
M/s. Prism Cement Ltd.,
Village Mankahari,
Post-Bathiya, District Satna (MP)-485111

2. Sri Contractor,
M/s. Prism Cement Ltd.,
Village Mankahari,
Post-Bathiya, District Satna (MP)-485111 ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 18/9/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/14/2017-IR(M): The dispute under reference relates to:

"***Kya vice president HR, Prism Cement Ltd, gram mankhari post bathaiya, jilla Satna (MP) ke antargat karyarath thekadar Shri Contractor ke sthapna mein shramik ke roop mein karyarath Shri balram Gauram Atmaj Ramniwas Gautam ko denank 5-4-2014 se 11-2-2016 tak karya mein banaye rakhne ke pashchath unhe karya se prethak kiye jaane ke karyavahi nyayuchit hai? Yadi nahi to sambandhit shramik kes anutosh ka haqdar hai?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Notices were duly served on them.

2. None of the parties appeared during hearing though many dates were given. Neither statement of claim nor statement of defense has been filed by either of the parties, hence closing the opportunity to file statement of claim/defense, the award is being passed.

3. **The reference is the point for determination in the case in hand.**

4. The initial burden to prove his case lies on the workman. In absence of any evidence in support of claim or any statement, his claim cannot be held proved.

5. Hence holding the case of workman not proved the reference is answered against the workman.

6. On the basis of the above discussion, following award is passed:-

A. The action of the management is held to be just and proper.

B. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K.SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 683.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स वाइस प्रेसिडेंट-एचआर,प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.); श्री कांट्रेक्टर, प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामसरोज कुशवाहा, जिला सतना सीमेंट स्टील फाउंड्री खादन, सतना (म.प्र.) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 134/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-29011/12/2017- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 683.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 134/2017) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Vice President-HR, Prism Cement Ltd., Satna (M.P.); Sri Contractor, Prism Cement Ltd., Satna (M.P.) and Shri Ramsaroj Kushwaha, Jila Satna Cement Steel Foundry Khadan, Satna (M.P.) which was received by the Central Government on 30.09.2021.

[No. L-29011/12/2017-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/134/2017

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Ramsaroj Kushwaha,
General Secretary,
Jilla Satna Cement Steel Foundry Khadan
Kamgar Union, Sant Nagar, Ghurdang,
Ward No.11, Post-Birla Vikas,
District Satna (MP)-485005. ... Workman

Versus

The Vice President HR
M/s. Prism Cement Ltd.,
Village Mankahari, Post-Bathiya,
District-Satna (MP)-485111.

2. Sri Contractor,
M/s. Prism Cement Ltd.,
Village Mankahari,
Post Bathiya,
District Satna (MP)-485111. ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 03/10/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/12/2017-IR(M). The dispute under reference relates to:

"***Whether Vice President-HR, Prism Cement Ltdd, Gram Mankahari Post Bathaiya, Jilla Satna (MP) ke antargat karyarat thekedar Shri Contractor ke sthapana mein shramik ke roop mein karyarat Shri Santlal Kevat Atmaj Mohanlal Kevat ko denank 1-8-2010 se 5-2-2016 tak karya mein banaye rakhne ke pashchat unhe karya se prethak kiye jaane ke karyavahi nyayuchhit hai?yadi nahi to sambhandit shramik kes anutosh ka haqdar hai? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Notices were duly served on them.

2. None of the parties appeared during hearing though many dates were given. Neither statement of claim nor statement of defense has been filed by either of the parties, hence closing the opportunity to file statement of claim/defense, the award is being passed.

3. **The reference is the point for determination in the case in hand.**

4. The initial burden to prove his case lies on the workman. In absence of any evidence in support of claim or any statement, his claim cannot be held proved.

5. Hence holding the case of workman not proved the reference is answered against the workman.

6. Accordingly, the following award is passed:-

A. The action of the management is held to be just and proper.

B. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 684.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नरेंद्र सिंह सुरक्षा एजेंसी, बिलासपुर (छत्तीसगढ़); डिपो प्रबंधक, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, बिलासपुर (छत्तीसगढ़) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री हरिश्चंद्र उपाध्याय, कार्यकर्ता के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 136/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-30012/15/2017- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 684.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 136/2017) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Narendra Singh Security Agency, Bilaspur(Chhattisgarh); The Depot Manager, Indian Oil Corporation Limited, Bilaspur (Chhattisgarh) and Shri Harishchandra Upadhaya, Worker which was received by the Central Government on 30.09.2021.

[No. L-30012/15/2017-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/136/2017

Present: P.K.Srivastava, H.J.S..(Retd)

Shri Harishchandra Upadhaya,
Ex-Security Guard, Tarbahar,
Sirgitti, Sardar Mohalla,
District Bilaspur (C.G.) ... Workman

Versus

The M/s. Narendra singh Security Agency,
Through Mahendra Singh,
Maharana Pratap Chowk,
District Bilasput (C.G.).

The Depot Manager,
M/s. Indian Oil Corporation Limited
Vyappar Vihar, District Bilaspur (C.G.) ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 3/10/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-30012/15/2017(IR(M). The dispute under reference relates to:

> "***Whether the action on the part of the Contractor <M/s. Narendra Singh Security Agency working at IOCL, Depot, Tarbhar Fatak, Bilaspur in transfring Shri HarishChandra Upadhaya to Kusmunda and subsequently terminating him from service without paying the terminal dues and other dues, without complying the provision of Section 25(F) of ID Act is appropriate and justified?If not what relief Shri Harishchandra Upadhyay, Ex-Security Guard is entitled to? .***"

1. After registering the case on the basis of reference, notices were sent to the parties. Notices were duly served on them.

2. None of the parties appeared during hearing though many dates were given. Neither statement of claim nor statement of defense has been filed by either of the parties, hence closing the opportunity to file statement of claim/defense, the award is being passed.

3. **The reference is the point for determination in the case in hand.**

4. The initial burden to prove his case lies on the workman. In absence of any evidence in support of claim or any statement, his claim cannot be held proved.

5. Hence holding the case of workman not proved the reference is answered against the workman.

6. Accordingly, the following award is passed:-

A. The action on the part of the Contractor M/s Narendra Singh Security Agency working at IOCL, Depot, Tarbhar Fatak, Bilaspur in transferring Shri HarishChandra Upadhaya to Kusmunda and subsequently terminating him from service without paying the terminal dues and other dues, without complying the provision of Section 25(F) of ID Act is held to just and proper.

B. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 685.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स वाइस प्रेसिडेंट-एचआर, प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.); श्री कांट्रेक्टर, प्रिज्म सीमेंट लिमिटेड, सतना (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री रामसरोज कुशवाहा, जिला सतना सीमेंट स्टील फाउंड्री खादन, सतना (म.प्र.) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 135/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-29011/13/2017- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 685.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 135/2017) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Vice President-HR, Prism Cement Ltd., Satna (M.P.); Sri Contractor, Prism Cement Ltd., Satna (M.P.) and Shri Ramsaroj Kushwaha, Jila Satna Cement Steel Foundry Khadan, Satna (M.P.) which was received by the Central Government on 30.09.2021.

[No. L-29011/13/2017-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/135/2017

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Ramsaroj Kushwaha,
General Secretary,
Jilla Satna Cement Steel Foundry Khadan
Kamgar Union, Sant Nagar, Ghurdang,
Ward No.11, Post-Birla Vikas,
District Satna (MP)-485005. ... Workman

Versus

The Vice President HR
M/s. Prism Cement Ltd.,
Village Mankahari, Post-Bathiya,
District-Satna (MP)-485111.

2. Sri Contractor,
M/s. Prism Cement Ltd,
Village Mankahari,
Post Bathiya,
District Satna (MP)-485111. ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 3/10/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/13/2017-IR(M). The dispute under reference relates to:

"***Whether Vice President-HR, Prism Cement Ltd, Gram Mankahari Post Bathaiya, Jilla Satna (MP) ke antargat karyarat thekedar Shri Contractor ke sthapana mein shramik ke roop mein karyarat Shri Lalman Kevat Atmaj Mohanlal Kevat ka denank 10-2-2011 se 5-2-2016 tak karya mein banaye rakhne ke pashchat unhe karya se prethak kiye jaane ke karyavahi nyayuchhit hai?yadi nahi to sambhandit shramik kes anutosh ka haqdar hai?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. Notices were duly served on them.

2. None of the parties appeared during hearing though many dates were given. Neither statement of claim nor statement of defense has been filed by either of the parties, hence closing the opportunity to file statement of claim/defense, the award is being passed.

3. **The reference is the point for determination in the case in hand.**

4. The initial burden to prove his case lies on the workman. In absence of any evidence in support of claim or any statement, his claim cannot be held proved.

5. Hence holding the case of workman not proved the reference is answered against the workman.

6. Accordingly, the following award is passed:-

A. The action of the management is held to be just and proper.

B. The workman is held entitled to no relief.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 686.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स प्रबंधक, सगमनिया लाइम स्टोन माइंस, सतना सीमेंट वर्क्स, सतना (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री कन्हैया सिंह, महासचिव, सतना सीमेंट फैक्ट्री एवं क्वेरी मजदूर कांग्रेस, सतना (म.प्र.) के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 34/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-29011/20/2009- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 686.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2010) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Manager, Sagamnia Lime Stone Mines, Satna Cement Works, Satna (M.P.) and Shri Kanhayia Singh, General Secretary, Satna Cement Factory & Quarry Mazdoor Congress, Satna (M.P.) which was received by the Central Government on 30.09.2021.

[No. L-29011/20/2009-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/34/2010

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Kanhayia Singh,
General Secretary,
Satna Cement Factory &
Quarry Mazdoor Congress,
Hq.Sagamnia Colony, Sagamnia,
District Satna (M.P.) ... Workman

Versus

The Manager,
Sagamnia Lime Stone Mines,
Satna Cement Works,
Post Birla Vikash,
District Satna (M.P.)
Management

AWARD

(Passed on this 15th day of September-2021)

As per letter dated 10-5-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29011/20/2009-IR(M). The dispute under reference relates to:

"***Whether the action of the management of Sangmania Lime Stone Mines, Satna Cement Works, Satna, M.P. for not considering the following demands of the Satna Cement Factory and Quarry Mazdoor Kangress, Sagmania, District Satna is legal and justified:-***

1. ***The contract workers working in any of the Department of Satna Cement Factory Satna be paid the scales of pay, bonus leave and all other benefits as per the Cement Wage Board Award.***

2. ***All the workers working in their establishment be paid arrears of Bonus as per the scale of pay mentioned in the Cement Wage Board Award .***

3. ***The senior skilled workers, operator attends and attends working in different Departments of Factory and Sagmania Mines, who have been kept in E to C category be placed in C to A Category and be given the scale of pay accordingly.***

4. ***The workers working in different Departments may be categorized as per their post, Grade and scale of pay.***

5. ***What relief the workman are entitled to?***"

1. After registering the case on the basis of reference, notices were sent to the parties. Both the parties have filed their respective statement of claim/defense.

2. According to the workman Union the Management of Satna Cement works O.P.No.1 and Birla Vikash Cement O.P.No.2 are in the process of production and sale of cement. They get lime stone from M/s. Sagmania Lime Stone Mines which is transmitted to them by automatic machines.All three O.Ps are under one Management and are covered as Industry as defined in Industrial Disputes Act,1947, hereby referred to by the word 'Act'. The Management of these 3 companies is engaged in unfair labour practice. The Badli workmen mentioned in the list attached to the statement of claim are not being regularized by the Management of OP No.2. They are being denied the benefits of regular workmen inspite of the fact that there are permanent vacancies of different category of workmen which are not being filled in by regular appointments and their work is taken by Badli workers and contract workers. According to the workman Union, there are only 640 employees working in these 3 companies in place of 909 regular employees working in 2008. The case of the workmen/union is that the contract workers and Badli workers are engaged since last 30 years to 40 years and they have outnumbered the regular appointees. They are being denied the benefits they are entitled in 'Cement Wage Board Award 1983'. They are further being denied regularization and other benefits at par with regular appointees as mentioned in the 'Cement Wage Board Award 1983'. These workmen have not been classified according to their grades and posts. They are continuing as Badli Workers since long which is itself violation of IIIrd Schedule of the Act. They are not being provided shoes and dust allowance as well as other instruments regarding safety as mentioned in Factories Act,1948. The Management has engaged workmen through contractor in the production department in its electrical and mechanical units in the Power House Ropad which are being paid wages as determined by Government of Madhya Pradesh which is against the provisions of 'Cement Wage Board Award 1983'which entitles them to get wages according to the Award, even as contract workers. Thus according to workman union the Management is engaged in unfair labour practice. The workmen have prayed that the reference be answered in their favour holding them entitled to benefits as mentioned in the reference.

3. The Management of O.P.No. 1, No.2 and No.3 have jointly filed their written statement of defense, wherein they have first raised preliminary objection regarding the right of workman/union to raise dispute. They have further denied the claim of the workman union that the job of permanent and regular appointees is being taken by Badli worker without giving them the benefits given to the regular appointees. According, to the Management, Badli workers have been engaged only in place of permanent, probationer or temporary workers and who remain temporary absent on temporary basis. The Management further claims that the Badli workmen cannot be regularized in absence of any provisions in this respect. The Management further denied the claim of the workmen-union that the present strength of the regularized workers in the three companies is 640 only and also that Badli workmen have out numbered the regular appointees. According to the Management, they are not engaged in unfair labour practice. Even if they are found engaged in unfair labour practice, it does not entitle the workmen to regular appointment rather it is a punishable as a crime. The Management has also denied the claim of workmen-union for classification by Grades and has further stated that since the nature of job of the Badli workmen is not such to obligate the Management to provide them shoes and other allowances like dust allowance, hence they are not given these amenities and when ever they are engaged in job of such nature they are given these benefits. Also it has been pleaded by the Management that the contract labour have been engaged only in respect to works which are not prohibited in Contract Labour (Regulation and Abolition) Act, 1970 and they are given wages by Contractor according to the minimum wages prescribed by Government of Madhya Pradesh. The Contractor who has supplied workmen is licenced under the Contract Labour (Regulation and Abolition) Act, 1970. Accordingly, it has been pleaded that the workmen are not entitled to any benefits as mentioned in the reference and the reference be answered against the workmen. The workmen Union has filed affidavit of Awdhesh Singh, Ram Nachatra Singh and Shashi Kumar Singh who have been cross-examined by Management. The Management has not examined any witness nor has filed any documentary evidence. At the time of argument, none was present from the side of Management, hence, arguments of learned counsel for workmen Union were heard by me. The Management was given opportunity of filing written argument which they have availed and have filed this written argument, which is on record.

4. Learned counsel for workmen has not referred to any case law. The management has referred to following case law:-

Karnataka State Road Transport Corporation and Another Vs. S.G.Kotturappa and Another (2005) 3 SCC 409, wherein it has been held that "so long as a worker remains a badly worker, he does not enjoy a status, and his services may be discontinued like that of a probationer, it he is not found suitable for the job for which his services were utilized as Badli. In the case referred, the Badli worker was found guilty of repeated acts of mis-conduct during the period of service- minor punishments were imposed thereafter. The Appellant employer watched the conduct of the Badli worker for a year and after period of one year, terminated his services as found not satisfactory. Only the Apex Court held that the Management was justified in law in doing so".

5. According to the learned counsel for workman-union, from the evidence on record, it is proved that the Management has adopted unfair labour practice in continuously engaging Badli workmen for years, inspite of the fact that there are vacancies in regular side. It is also proved that Management has adopted this practice only to deprive the Badli workmen of status and privileges of permanent workman which is unfair labour practice as mentioned in the 5th Schedule of the Act. This Tribunal is within its powers to undo such an unfair labour practice by recognizing these Badli workmen as regular employees of Management and granting them wages and benefits applicable to regular and permanent workman. Learned counsel further states that in the ``Cement Wage Board Award 1983` Contract Labour are also entitled to the benefits of this Award, hence they are entitled to wages as provided under the Award and not as provided by the Government of Madhya Pradesh, as in the case in hand . Learned Counsel has referred to Schedule III of the Act and has further submitted that the Management is under legal obligation to classify the workman by grades and if Management does not discharges its duty under law, the Tribunal is within its powers to adjudicate it. Accordingly, learned counsel has submitted that the reference be answered in favour of the workman.

6. On the other hand, the Management side has submitted in its written agreement that even if it is found that the management has adopted unfair labour practice, by engaging Badli workmen for years and not regularizing them inspite of regular vacancies, these workmen did not get their rights to be regularized. The management has referred to case law Karnataka State Corporation(Supra) as mentioned above, on this point and has submitted that such an Act is punishable as a crime only. The management has further submitted that the contract labours have been engaged only for doing works which are not prohibited by the Act and they are being paid by the contractor according to the Minimum wages decided by State of Madhya Pradesh. Accordingly, it has been prayed that the reference be answered against the workmen.

7. The Reference is the point for determination in the case in hand.

8. Before entering into any discussion, some provisions require to be mentioned, which are as follows:-

Section 2K of the Industrial Disputes Act,1947 reads as follows:-.

(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

9. **Third Schedule (Section 7A) of the Industrial Disputes Act,1947** reads as follows:-

Matters within the Jurisdiction of Industrial Tribunals

1. **Wages, including the period and mode of payment;**
2. **Compensatory and other allowances;**
3. **Hours of work and rest intervals;**
4. **Leave with wages and holidays;**
5. **Bonus, profit sharing, provident fund and gratuity;**
6. **Shift working otherwise than in accordance with standing orders;**
7. **Classification by Grades;**
8. **Rules of discipline;**
9. **Rationalisation;**
10. **Retrenchment of workmen and closure of establishment; and**
11. **Any other matter that may be prescribed.**

10. **The Fifth Schedule(Section 2(ra)**)of Industrial Disputes Act,1947 reads as follows:-

UNFAIR LABOUR PRACTICES

1....

2....

3...

4...

5...

6...

7..

8..

9...

10. "To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen)."

11. As stated above, the claim of the workman-union is that the job of permanent and regular employee is being taken by Badli workmen just in order to deprive them the benefits admissible to regular appointees and this is being done since last 30 to 40 years. Badli workman is not defined in the Act . The definition mentioned in Madhya Pradesh Industrial Regulation Act can be borrowed in this respect, according to which "Badli, means a workman who is engaged in place of permanent, probationer or temporary workmen who is temporarily absent."

12. It is not disputed between the parties that the Badli workmen are engaged on temporary basis in place of permanent, probationer or temporary workmen in their absence, is the law and is practiced in the Industry. The Management has right to do so as is mentioned in the standing orders, in this respect. As the definition of the Badli workman states they are in temporary engagement just like a stop-gap arrangement in place of temporary absence of permanent probationers and temporary workmen who are appointed against regular vacancies. It is specific case of the workman union which is supported by statements of oath of three witnesses from the workman side that firstly the Badli workmen have outnumbered the regular appointees and secondly the total number of regular appointees at present is only 640 whereas it was 909 in the year 2008. The Management has denied this allegation of workmen union in its written statement of defence but this denial is not specific. The management has not disclosed anywhere the total number of regular appointees and Badli workmen engaged and also has not disclosed the period since when these workmen have been engaged by the management in place of regular appointees. The Management has not filed any documents nor has examined any witness from its side to support its case on this point. Hence the Management is found guilty of unfair labour practice by continuously engaging Badli workmen just to deprive them the benefits and privileges admissible to permanent and regular workman as mentioned in Vth schedule of the Act referred to above.

13. Now the point arises that when the Management is found having engaged in unfair labour practice, is this Tribunal without powers can undo such an Act.

14. Since the engagement of Badli workmen in place of permanent employees on permanent basis and the dispute whether such type of workmen are entitled to any benefit, is a matter related to engagement of these workman. Hence any dispute in this respect will be an Industrial Dispute as mentioned in Section 2K of the 'Act' as referred above. Under Section 7(A) of the Act, this Tribunal, being Labour Court also is within its powers to adjudicate Industrial Disputes referred to it by the appropriate Government. Hence it is held that this Tribunal is within its powers to undo such an unfair labour practice, as it has been held proved in the case in hand. Hence in the light of above discussion, the arguments of Management that this Tribunal is without powers to undo this unfair labour practice is devoid of any merit and is not accepted. Accordingly the Badli workmen engaged by the Management are held entitled to all the benefits and privileges with respect of wages and other service condition admissible to the regular appointees in the Management, according to their grade and category.

15. As regards, the second point whether the contract workers working in any department of the Management are entitled to be paid the scales of pay, bonus, leave and all other benefits as per the, following portion of the Cement Wage Board Award,1983 is being reproduced as follows:-

13.1.1:- Our recommendations should apply to workers employed at the cement factories and at the lime-stone quarries owned by the cement producers or supplying the bulk of their output to cement factories, and to workers employed by the cement producers in the transport of lime-stone from the quarries to the factory. They should similarly apply to workers employed at places where calcareous sand or shells are collected and clay is excavated, and to workers employed by the cement producers in transporting these raw materials to the factory.

13.1.2:- Our recommendations should apply to workers employed directly or through contractors. Our recommendations do not cover workers employed by contractors where such workers are engaged in construction work and on purely temporary jobs, not connected with the manufacturing process.

13.1.3:- Our recommendations should apply to all cement factory(and to the quarries, etc. mentioned in para 13.1.1) throughout India whether the factories are already in production or will come into production in future.

51. Thus the agreement between the parties before us covers radically the whole lot of workmen employed in the industry. Therefore, we are happy that the major part of the problem relating to coverage has thus been solved by agreement and we award accordingly.

16. Hence in the light of these provisions of Award, the contract workers are held entitled to scale of pay, bonus and other benefits as per ``Cement Wage Board Award 1983`. As regards the claim of the workman union regarding category to be classified by grades, this is also a dispute regarding engagement/non-engagement of workman. Hence an industrial dispute as defined in the `Act`, the Industrial Tribunal is within its powers to adjudicate on this dispute as is mentioned under Section 7A of the Act. Hence, it is held that the workman working in different departments are entitled to be classified by Grades.

17. On the basis of the above discussion, following award is passed:-

A. The Contract workers working with the Management are entitled to get their wages, bonus, leave and other benefits as per `Cement Wage Board Award 1983' and are entitled to arrears accordingly.

B. The workman are entitled to pay, classified by Grades by the Management.

C. The Badli Workmen are entitled to get the wages and other benefits admissible to the regular and permanent appointees by the Management.

D. Parties shall bear their own costs.

18. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2021

का.आ. 687.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कारखाना प्रबंधक एवं उपाध्यक्ष, विक्रम सीमेंट, नीमच (म.प्र.) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पृथ्वी सिंह, कार्यकर्ता के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 24/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.09.2021 को प्राप्त हुआ था।

[सं. एल-29012/25/2009- आईआर (एम)]

डी. गुहा, अवर सचिव

New Delhi, the 30th September, 2021

S.O. 687.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2010) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. The Factory Manager & Vice President, Vikram Cement, Neemuch (M.P.) and Shri Prithvi Singh, Worker which was received by the Central Government on 30.09.2021.

[No. L-29012/25/2009-IR(M)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/24/2010

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Prithvi Singh,
S/o Shri Mangej Singh,
R/o quarter No.E/2/5,
Durga Colony, Vikram Nagar,
Post Office Khor, Neemuch. ... Workman

Versus

The Factory Manager & Vice President,
Vikram Cement,
Vikram Nagar, PO Khor,
Neemuch (M.P.) ... Management

AWARD

(Passed on this 8th day of September-2021)

As per letter dated 16-2-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/25/2009-IR(M). The dispute under reference relates to:

> "***Whether the action of the Factory manager & Vice President HR & P & A Vikram Cement, Khor, District Neemuch in dismissing the services of Shri Prithvi singh S/OMangej Singh w.e.f. 16/1/2009 is justified? To what relief the workman is entitled for?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties. The parties appeared and have filed their respective claim/defense.

2. The case of the workman as stated in his statement of claim is that he was employed with the management on permanent basis. His services were terminated by management vide order of Management dated 16-1-2009. Before his termination, the Management consirately instituted a departmental inquiry against all rules and provisions and held the workman guilty of charges on an ex-parte basis which was totally arbitrary and illegal because the workman was not given ample opportunity to defend himself. He was not supplied the material in support of the charge. The whole inquiry proceeding was a sham proceeded against the workman. The management illegally accepted the findings of the Inquiry Report and passed the impugned order of termination of his services, which is against law and the punishment is disproportionate to the charge thought none of the charge was proved in the inquiry. Accordingly, the workman has prayed that setting aside his termination, he be reinstated in service with all back wages and benefits.

3. According to the Management, the workman was working as a Heavy Equipment Operator. He was never sincere to his work and was habitual of absenting himself unauthorisedly. He remained absent unauthorisedly for period of 129 days from October-2007 to October-2008. He was issued a chargesheet dated 17-10-2008, with a direction to submit his explanation within 72 hours. As his explanation was not found satisfactory, a Departmental Inquiry was instituted against him and a notice in this regard directing him to appear before the Inquiry Officer on 8-11-2008 was served on him. He appeared before the Inquiry Officer and accepted the charges, during the course of inquiry. It is also the case of the management that the inquiry proceeded against the workman in which he was given opportunity to defend himself. He did examine his

witness during the inquiry and thereafter inquiry was concluded. The inquiry officer submitted his report, finding him guilty of misconduct as mentioned above. The Disciplinary Authority accepted the Inquiry Report and issued a show cause notice before awarding punishment to the workman. Hence according to the Management, the inquiry was conducted following the principles of natural justice, and rules relevant in this respect. The charges were rightly held proved and the punishment was not disproportionate to the charges. Accordingly, it has been prayed that the reference be answered against the workman.

4. My learned Predecessor framed following issues vide his order dated 28-8-2013:-

"1. Whether the enquiry conducted against the workman is legal and proper?

2. Whether the misconduct alleged against the workman are proved in the evidence of enquiry proceedings?

3. Whether the punishment of dismissal is proper and legal? And

4. What order as to relief?"

5. **ISSUE NO.1:-**

Issue No.1 was proceeded as preliminary issue. Thereafter, both the parties were again given opportunity to produce evidence on preliminary issue no.1. The workman examined himself on oath and was cross-examined. He did not prove any document. The Management examined Shailesh Vikram Singh, the Inquiry Officer on oath, he was cross-examined.Management also proved documents Exhibit M-1 to Exhibit M-5 which are applications by workman, charge sheet, inquiry proceedings, reply of workman, letter of Management, respectively. Preliminary Issue No.1 was decided by my learned Predecessor, vide his order dated 7-4-2016 . The departmental inquiry conducted was held legal and proper.

6. Thereafter, parties were against given opportunity to lead evidence on remaining issues. The workman did not file any evidence. Management examined its witness Jay Prakash Joshi who proved Exhibit M-6 regarding payment of Provident Fund dues of the workman.

7. Thereafter, the arguments of learned counsel for both the sides were heard on remaining issues and the records was also perused by me.

8. **ISSUE NO.2:-**

The charge against the workman is that he unauthorisedly absented himself for a period of 129 days within the period October-2007 to September-2008. The details of his absence are mentioned in the charge-sheet. The perusal of the inquiry report reveals that the workman appeared before the Inquiry Officer. He did not cross-examine any witness though witness P.C.Joshi was examined by the Management during the inquiry , who detailed his absence in his statement on oath. He further stated that the workman never filed any medical certificate or any other document justifying his absence. I have gone through this statement of this witness, who has corroborated the charge. There is also mention of statement of the workman during inquiry in the Inquiry Report wherein he stated that he was a Union Office Bearer between 1985 to March-2008. He could not attend his work due to union activities. Now he is relieved of union responsibilities in March-2008 and thereafter he has improved himself. He further stated that now he will attend his job regularly and improve himself. I have gone through the statement of the workman. From the perusal of these statements, I find no occasion to defer with the finding of the Inquiry Officer that charge of willful unauthorized absence on intermittent basis is proved and this finding of Inquiry Officer is affirmed.

Issue No.2 is answered accordingly.

9. **ISSUE NO.3:-**

10. The relevant provision of the Act requires to be referred before entering into any discussion which is as follows, Section2(oo), Section 25(B), Section 25(G), Section 25(N), Section 25(F):-

> **2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;**

Section 25 B:-

Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

[25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the

date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

11. Now coming to the case in hand, in the light of settled principles in this respect, as mentioned above, it is established that the workman has been willful and unauthorisedly absentee for the period mentioned in the charge. His justification for his absence is not sufficient. His absence is on intermittent basis in every month during this period. The standing orders provide that such a conduct is a major misconduct for which dismissal is also a penalty. There is nothing on record to hold that the punishment awarded to the workman is shockingly disproportionate to the charge, requiring interference by this Tribunal. Accordingly, it is held that the punishment awarded to the workman is not disproportionate to the charge. **Issue No.3 is decided accordingly.**

12. **ISSUE NO.4:-**

On the basis of findings recorded in this award, the workman is held entitled to no relief. **Issue No.4 is decided accordingly**.

13. On the basis of the above discussion, following award is passed:-

A. The action of the Factory manager & Vice President HR & P & A Vikram Cement, Khor, District Neemuch in dismissing the services of Shri Prithvi Singh S/O Mangej Singh w.e.f. 16/1/2009 is held to be legal and proper."

B. The workman is held entitled to no relief.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

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